71-1677

Supreme Court, U. S.
FILED
JUN 24 1972
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1971

No _____

STANLEY V. TUCKER,
Petitioner

-v-

ELIZABETH ANN BITONTI,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF CONNECTICUT
AND APPENDIX

STANLEY V. TUCKER
Petitioner
963 Capitol Ave.
Hartford, Conn 06106
203 232-0282

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1971

No _____

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STANLEY V. TUCKER,

Petitioner

-v-

ELIZABETH ANN BITONTI,

Respondent.

---

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

---

Petitioner prays that a Writ of Certiorari issue to review the judgment of the Conn. Supreme Court entered March 23, 1972, reargument of which was denied on April 19, 1972, which affirmed a judgment of the Superior Ct of Hartford, Connecticut entered for Elizabeth Ann Bitonti in the amount of $10,000.00 for an "interaction" between failure to provide lighting of public halls and elevation of a Chrome Strip.

---

CITATION TO OPINIONS BELOW

---

The Opinion of the Supreme Court of Conn. is reported 23 CLJ 39 and is reprinted in

the Appendix hereto, infra, E.1 -E2 . The Opinion of the Superior Court of Hartford is unreported and is printed in Appendix, C 15-C17

## JURISDICTION

The judgment of the Supreme Court of Connecticut was entered March 28, 1972; and a timely petition for reargument was denied April 19, 1972. The jurisdiction of this Court is invoked under 28 USC 1257 (3).

## QUESTIONS PRESENTED FOR REVIEW

Respondent, Elizabeth Ann Bitonti, resided as Trespasser for about four days in concealment and without knowledge or approval of Petitioner as Landlord in a basement apartment owned by Petitioner in Hartford Conn.

Respondent returning from an evening of brawling and drinking with a male companion just prior to instituting divorce proceedings against her husband of that time she alleged ly fell into the basement stairway injuring her jaw. All medical and hospital bills were paid by State Welfare. Suit was filed against Petitioner alleging violation of Conn. G. S. 19-346, requiring lighting of public halls at night. Damages of $10,000 were awarded on trial by the court on an "interaction" between height of molding and lack of lighting. Such interaction not being part of the complaint nor of the pleadings.

Substantial Questions Presented to This Court:

1. Was Petitioner denied due process of law by state court judgment based upon an "interaction" of which Petitioner was given no notice in the pleadings nor during the trial prior to receipt of the judgment in the mail?

2. Was Petitioner denied due process of law by Trial Judge's rulings on trial contrary to well settled statutory and case law?

3. Was Petitioner denied due process of law by Trial Judge's findings wholly unsupported by the evidence?

4. Is Connecticut General Statute 19-346, requiring lighting of public halls at night unconstitutional on its face and as applied herein as lacking standards thus leading to decisions that are conflicting, arbitrary, capricious and speculative and leading to the confiscation of Petitioner's property in violation of the fundamental federally protected rights to due process and to equal protection of the laws?

---

THE QUESTIONS ARE SUBSTANTIAL

---

Substantial federal questions are raised in this Petition For Certiorari such as the constitutionality of Connecticut's statute purporting to regulate the lighting of public halls at night and the denial of due process to Petitioner/property owner by the state court.

While many states have adopted similar statutes requiring lighting of public halls at night; most statutes, such as New York and New Jersey, are more precise, setting standards such as the time of sunset, a time precisely set by the Natical Alminac, as the time this state imposed duty begins. Connecticut's statute, G. S. 19-346, has existed with almost no change since adopted first in 1911. None of the statutes of any of the states requiring lighting of public halls has to the knowledge of Petitioner been reviewed by this Honorable Court or by any federal court as to the constitutional issues raised herein.

Resolution of issues raised herein would be of nation wide importance. That landlord tenant relationship and the satisfactory adjudication of disagreements thereunder involves many fundamental federal issues has been recognized by this court in key civil rights cases such as.....

Sanks v Georgia 91 S Ct 593

Lindsay v Normet 92 S Ct 593

This is a case that equals or exceeds Lindsay, supra, in the substantiality of the federal questions raised. If Lindsay, supra, was of sufficient nationwide importance to grant certiorari then so too is this instant case.

---

SUBSTANTIAL FEDERAL QUESTION DROPPED FROM THIS PETITION DUE TO AFFIRMANCE BY THIS COURT IN COMPANION FEDERAL CASES.

---

In his appeal from the judgment in the

Superior Court to the Connecticut Supreme Ct. Petitioner challenged the constitutionality of Connecticut General Statutes permitting levy of pre-judgment attachments made without notice or hearing. See....

Snaidach v Family Finance 395 US 337

Petitioner properly and timely made his challenge in the Superior Court of Hartford by Motion, said Motion denied January 9, 1970. Both Motion and Order of Denial are included in the Appendix annexed hereto, E1 -

In his briefs to the Connecticut Supreme Court Petitioner devoted the major thrust of his challenge to the unconstitutionality of Connecticut General Statutes permitting pre - judgment attachments to be made without notice or hearing. Eight full pages were devoted to exploring the federal issues involved.

Nevertheless, on March 28, 1972 the Connecticut Supreme Court dismissed Petitioner's appeal claiming the issues were "not understood" and "without merit" (See AppendixE )

With STARTLING TIMING in relationship to said state court proceedings the UNITED STATES SUPREME COURT in another case.....

Tucker v Maher 405 US. _____

involving an identical challenge to the same attachment statutes, but litigated in the federal court structure, with almost identical pages in both federal and state briefs, affirmed the challenges as follows:

(order printed on next page)

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

April 17, 1972

Mr. Stanley V. Tucker
~~Box~~ 963 Capitol Avenue
Hartford, Conn.

RE: STANLEY TUCKER v. MAHER, ET AL.,
No. 70-249.

Dear Sir:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Second Circuit for further consideration in light of Lynch v. Household Finance Corp., 405 U.S. ____(1972).

Very truly yours,

Michael Rodak, Jr., Clerk
By E. T. Fuller
Assistant Clerk

. = cc opin. in Lynch v. Household Finance Corp.

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Thus this Honorable Court can take due notice that the very issues, and substantial federal ones at that, affirmed in Tucker v Maher, 405 U. S. _____ were by its own admission "not understood" by the Conn. Supreme Court only days before.

For this reason the challenge exercised in the Connecticut State Courts to the constitutionality of the attachment statutes is "dropped" from this appeal as the matter is now properly before the Second Circuit Court of Appeals in a parallel case, Tucker v Maher, 405 U. S. _____ .

---

CONSTITUTIONAL PROVISIONS INVOLVED

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Amendment XIV ; Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person the equal protection of the laws.

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## STATEMENT OF THE CASE

By her own testimony, without a single substantiating eye-witness, Respondent, Elizabeth Ann Bitonti, testified that she spent the evening of June 30, 1968, the night of the alleged fall, prior to service of divorce papers on her husband of that time, with a male drinking companion, Mr Roy Barstow, at a tavern, The Hour Glass, on Park Street in Hartford, Connecticut. After consuming several glasses of gin and orange juice the two retired to rooms rented by Roy Barstow in West Hartford where the quarreling and brawling was so violent and loud that the two were ordered off premises by the landlady, Mrs Sheila Gullickson.

By her own testimony, without a single sustantiating eye-witness, Respondent Elizabeth Ann Bitonti, a few minutes later entered premises owned by Petitioner, where she had lived for four days as Trespasser in concealment and secrecy from Petitioner as Owner. At the hour of 9:20 pm she testified she fell down the stairs injuring her jaw resulting in hospital and medical payments all made by Connecticut state welfare. This time of alleged injury was outside the scope of the statutory period calling for artificial lighting under G. S. 19-346 since the Nautical Alminanc showed night to begin at 9:57 PM with the commencement of nautical twilight.

Her own testimony showed that Respondent knew the hall lights had been out due to act of God such as heat wave, thunder storm, etc., etc., but that neither Respon-

dent nor any of the other tenants gave any notice nor warning to Petitioner as Owner.

The reason was obvious; the building built in 1964 complied with the state Building code and the State Tenement Act, of which G. S. 19-346 is but one part, and had a large aluminum and glass entry door with glass side lights admitting generous amounts of daylight by day and street light by night from the street lamp located just outside the entry. This light further, under established Connecticut law, meet the requirements of G. S. 19-346.

Feeney v Perelmutter 128 Conn 573 (1942)

In Feeney, supra, it was established there was adequate light under the statute if the person claiming injury was able to see where she placed her feet even if the light was artificial and came through a window in the stairwell.

In addition, by her own testimony, Respondent saw as a "silvery beam", Appendix 4a, the metal stripping upon which she allegedly fell and upon which in "interaction" with the statutory defect the judgment was based. When queried on cross-examination as to what caused her to fall, Respondent stated.....

"she did not know" (Appendix 4a)

Petitioner contends that Connecticut and Massachusetts with common frontiers and both operating under limitations of the UNITED STATES CONSTITUTION and federal law and with similar provisions in their state constitutions have over the centuries drifted into vastly different positions in their case law on landlord/tenant relationships. Massachusetts

law complies with the due process clause of the 14th amendment and gives equal protection to both landlord and to tenant. For example a landlord in Massachusetts is not liable for snow or ise or lack of lighting or other alleged defect unless there can be proven a wilful act of neglect of which the landlord had notice.

Connecticut case law is harsh, severe, discriminatory and violates repeatedly, as herein, the due process and equal protection clauses by holding landlords liable where there has been no notice or warning and where there has been no wilful act of negligence on part of the landlord but only an act of God causing field conditions leading to the alleged injury.

Petitioner seeks for this court by review of the issues herein to bring Connecticut case law into compliance with the federal constitution so landowners in Connecticut will no longer be subject to harsh, discriminatory, confiscatory judgments and be deprived of their property without the due process of law and without equal protection of the laws.

---

## REASONS FOR GRANTING THE WRIT

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### I. CONNECTICUT CASE LAW HAS A LONG HISTORY OF UNCONSTITUTIONAL UNEQUAL TREATMENT OF PROPERTY OWNERS DISCRMINATED AGAINST AS A SELECT CLASS.

The Connecticut state courts below have ecided federal questions of substance not retofore determined by this Court, and de- ded the Federal Question in a way not in cord with applicable decisions of this court.

applying one set of case law standards to ndlords or property owners that is harsh, vere, discriminatory and at total variance ith the basic state law standards for all itigants (plaintiffs or defendants) the Conn, tate Courts have created a suspect classif- cation that violates fundamental federal w and federally protected rights as defined this Honorable Court.

THE APPLICABLE TEST

This Courts method of deciding when a state denying a class of litigants equal protection the laws was succinctly summarized recently the California Supreme Court in Westbrook v haly, 2 Cal 3d 765, 784-785, 471 2d 487 (1970)"

... [T]he United States Supreme Court has tended to employ a two-level test in reviewing legislative classifications under the equal protection clause. In the area of economic regulation, the high court has exercised restraint, investing legislation with a presumption of constitutionality and requiring merely that distinctions drawn by a challenged statute bear some rational relationship to a conceivable legitimate state purpose. (See *McDonald v. Board of Election* (1969) 394 U.S. 802, 809 [22 L.Ed.2d 739, 745-746, 89 S.Ct. 1404]; *McGowan v. Maryland* (1961) 366 U.S. 420, 425-426 [6 L.Ed.2d 393, 398-399, 81 S.Ct. 1101].)

On the other hand, in cases involving "suspect classifications"[37] or touching on "fundamental interests,"[38] the court has adopted an attitude of active and critical analysis, subjecting the classification to strict scrutiny. (See *Shapiro v. Thompson, supra,* 394 U.S. 618, 638 [22 L.Ed.2d 600, 617]; *Sherbert v. Verner* (1963) 374 U.S. 398, 406 [10 L.Ed.2d 965, 971-972, 83 S.Ct. 1790]; *Skinner v. Oklahoma, supra,* 316 U.S. 535, 541 [86 L.Ed. 1655, 1660]; see also *Developments in the Law–Equal Protection* (1969) 82 Harv.L.Rev. 1064, 1120-1131.) Under the strict standard applied in such cases, the state

bears the burden of establishing not only that it has a *compelling* interest which justifies the law but that the distinctions drawn by the law are *necessary* to further its purpose. The dual aspect of this standard is clearly formulated in the opinion of Justice Marshall, dissenting, in *Hall v. Beals* (1969) 396 U.S. 45, 52 [24 L.Ed.2d 214, 220, 90 S.Ct. 200]: '. . . once a State has determined that a decision is to be made by popular vote, it may exclude persons from the franchise only upon a showing of compelling interest, and even then only when the exclusion is the least restrictive method of achieving the desired purpose. [Citations.]'

[37] Certain classifications, such as those based on race (*McLaughlin v. Florida* (1964) 379 U.S. 184 [13 L.Ed.2d 222, 85 S.Ct. 283]) or wealth (*Douglas v. California* (1963) 372 U.S. 353 [9 L.Ed.2d 811, 83 S.Ct. 814]), are "highly suspect" (*McDonald, supra,* at p. 807 [22 L.Ed.2d at p. 744]). 38

[38] Interests which have been identified as fundamental and therefore deserving of special treatment under the equal protection clause include procreation (*Skinner v. Oklahoma* (1942) 316 U.S. 535 [86 L.Ed. 1655, 62 S.Ct. 1110] and interstate travel (*Shapiro v. Thompson* (1969) 394 U.S. 618 [22 L.Ed.2d 600, 89 S.Ct. 1322]).

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It is Petitioner's contention that under either the "rational relationship" test or the "compelling state interest" test, Connecticut's restrictions upon landlord/defendants as a special class discriminated against in the state court structure where normal rules and practices are ignored or regularly for decades if not indeed for centuréés disregarded only where a certain defendant appears in the state courts ; a property owner defendant; must fall when examined in light of due process standards established by by this Honorable Court.

Some of the arbitrary, capricious discrimination practiced against this Petitioner in the state courts of Connecticut in the action below are simplyl listed below:

1. Accident not at "night" as defined under Nautical Alminac therefore statutory liability not applicable.

2. Trespasser had knowledge and notice of alleged defects therefore no liabiltiy could be imposed on landowner/petitioner.

3. Judgment based upon an "interaction" not part of pleadings nor pleaded at trial.

4. Court ignored hearsay rules of evidence

5. Conn law imposed strict cmmpliance with statutory conditions and prohibits mixed statutory and non-statutory claims (except for property owner defendants)

6. Under state case law Trespasser/tenant had adequate light where she saw where she was putting her feet.

7. Petitioner held liable for "act of God"

COPY

8. Petitioner/landowner held liable for "defects" of which he had no notice or warning.

9. Judicial determination of "interaction" theory violated the state law imposed conditions and protections under the State Building Code, the State Tenement Act and the Certificate of Occupancy issued thereunder.

10. The statute requiring lighting of public halls at night, G. S. 19-346, lanks any standards (therefore it is unconstitutional) so the state court made its own arbitrary and unique standard of "interaction" one never heard of before.

11. The state court ignored all existing state case law standards purporting to define G. S. 19-346 thus exposing the unconstitutionality of this statute resting on flimsey state case law that may be ignored by any judge in his own arbitrary discretion.

12. Trial Court ignored state case law standard that held Petitioner not liable as he acted as a reasonable man in making weekly inspections for cleanliness and safety.

The discriminatory, harsh and unconsionable decision in the state trial court, upheld by the Connecticut Supreme Court is further developed in other points of argument in this brief where the uncertainty, vagueness and total lack of standards in G. S. 19-346 are explored.

In the material below Petitioner seeks to show this court other cases than this instant case where judgments were rendered along the harsh, severe, discriminatory case law treatment such as Petitioner was subjected to. In Connecticut Landlord/tenant problems have beem a fertile source of litigation over the years. Notwithstanding there are few statutes on the books to regulate these litigations and many statutes, such as G. S. 19-346, were written half a century or more ago before the need for clearly defined statutes with comprehensive standards was developed by the decisions of this Honorable Court. In addition the Connecticut legislature has not been overly diligent in dusting off these ancient statutes and updating them with definitions, standards, and rules.

1. House v Metcalf 27 Conn 631 (1858)

House, supra, was perhaps the first case involving tenant/landlord disputes where an unfortunate pattern was started that has persistently and capriciously reflected itself into arbitrary, capricious, and discriminatory decisions in Conn. state court decisions over the years. House, supra, involved a tenant operating a noisy water wheel that frightened a horse causing damage. Both tenant and landlord were held liable.

2. Calway v Schaal & Son 113 Conn 586 (1931)

Seventy-three years after House, supra, the Conn. courts held a property owner liable for accumulations of snow and ice due to melting and dripping.

3. Young v Talcott 114 Conn 675 (1932)

Landowner held liable for ice and snow melting and freezing.

4. Miranti v Brookside Shopping Center 266 A 2d 1969.

In this action Plaintiff was injured when chased by a dog and running over trash. The Conn. Supreme Court held it discretionary (?) for the trial court to impose liability under these facts.

5. Crica v Bosak 153 Conn 89, 92

This case is distinguished in that the tenant knowlingly entered a darkened area and sustained injury. The landlord was not present. The Trial Court went on to hold...."tenant was not required to obtain a light at her own peril...." This incredible concept violates every safety instruction taught to all boy scouts and girl scouts age 12 and up! Such a concept discriminates in that it clearly says the tenant can do no wrong and the landlord is always guilty. What is to stop tenants from concealing defects from their landlord and when injured filing suit?

In this action Respondent, Elizabeth Ann Bitonti reportedly did not want to sleep in a twin bed with her friend, Mrs Irene Russak, so the two changed beds, putting beds into the hall. One of the beds in the hall was the object Mrs Bitonti allegedly struck and injured her self on. So in this instant action the injury come in part from deliberate action on the part of the Trespasser and not on the part of the property owner/petitioner.

Petitioner contends many cases in Connecticut have established case law that is sound. Yet in this case the trial court refused to follow established case law as the statute had no standards and he felt free to follow his own capricious inclinations. YET THE RULINGS OF THIS COURT STRICTLY FORBID SUCH DISCRIMINATION.

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In sharp contrast to the harsh, discriminatory and unconstitutional case law of Conn. discriminating against a suspect classification of persons, landlord/property owners, and in favor of another suspect classification, tenants, many of the state courts in the United States have considered identical or equivalent factual and legal situations similar to those at issue herein and have decieded consistent with the due process and equal protection mandate of the UNITED STATES CONSTITUTION. A few such cases follow:

1. TEXAS - LICENCEE CANNOT RECOVER.

Book v Health ( Tex Civ App ) 181 Sw 491

"A tenant was held not entitled to recover for injuries when going to the river to bath via a stair leading off premises rented to another part of the building."

2. INDIANA - TRESPASSER CANNOT RECOVER.

Springer v Byran 137 Ind 15

"A newsboy was held to be a trespasser and the owner was not liable for injuries incurred in the elevator."

3. MAINE - INVITEE CANNOT RECOVER.

Temple v Congress Square Garage, Inc.

145 Me 274
"Apartment owner not liable for tenant's invitee who fell on wet newly washed floor"

D CLOSE IN CENTER

4. VIRGINIA - OWNER DOES NOT INSURE ALL WHO USE HIS STAIRS.

Rivell v Deegan 192 Va 428

"Landlord not liable for safety of all who use stairs."

5. MASSACHUSETTS - 1/4" NOSING PROJECTION ON STAIRS NOT NEGLIGENCE

Snecker v Feingold 314 Mass 613

"The projection of nosing of 1/4" plus loose screw of 1/16" held insufficient variance to be negligence, verdict directed for landlord where tenant's heel caught on nosing and tenant fell."

6. OREGON - DILIGENT LANDLORD NOT LIABLE.

Ashein v Fahey 170 Or 330

"Landlord knowing of defects not liable if he is reasonable diligent."

7. MASSACHUSETTS - LANDLORD NOT LIABLE IF DEFECT NOT REPORTED.

Circiello v Levine 316 Mass 216

"Verdict directed for landlord where tenant fell over nails sticking up in stairs but not reported to owner."

8. 8. MICHIGAN - OWNER NOT LIABLE FOR GUEST WHO FELL INTO UNLIGHTED STAIRS.

Steger v Innen 157 Mich 494

"Guest of tenant who falls into unlighted elevator shaft contributorilly negligent. Owner not liable."

9. MASSACHUSETTS - LANDLORD ONLY REQUIRED TO MAINTAIN CONDITIONS AS THEY EXISTED AT BEGINNING OF TENANCY.

Ducey v Springfield Comm. Bank.

10. KENTUCKY - LANDLORD NOT LIABLE FOR DEFECTS VISIBLE AT LEASING.

Lindsay v Kentucky Dev Co.
291 Ky. 253.

A simple reading of the above cases shows remarkable factual similarity to this instant action ---- yet a sharp and startling contrast between the judgments rendered. It is not contended herein that all states must rule alike but rather than under equivalent laws and under the common federal constitution that the states are obligated to treat ALL persons within their frontiers with equal treatment and to gvie all persons within their frontiers due process of law.

Appellant contends Connectict state court action in this action defies both the equal protection and the due process clauses of the UNITED STATES CONSTITUTION.

II. THE STATE TRIAL COURT DENIED DUE PROCESS TO PETITIONER BY RENDERING LIABILITY ON AN "INTERACTION" OF WHICH PETITIONER WAS GIVEN NO NOTICE VIA PLEADINGS NOR TRIAL PRIOR TO RECEIPT OF JUDGMENT IN MAIL.

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This Court should grant this Petition for Certiorari because the Connecticut Supreme Ct. has decided Federal Questions of substance not heretofore determined by this Court, and decided the Federal questions in a way not in accord with the applicable decisions of this court.

1. This Court has often reiterated that due process of law requires a penal statute to have a reasonable degree of certainty. It has warned that:

> "No one may be required at peril of life, liberty or property to speculate as to the meaning of statutes. All are entitled to be informed as to what the State commands or forbids. * * * * (A) statute which either forbids or requires the doing of an act in terms so vague that men of ordinary common intelligence must guess necessarily at its meaning and differ as to its application violates the first essentail of due process of law." Lanzetta v New Jersey, 306 U. S. 451, 453, 59 S. Ct 618 (1939)

See also Wright v Georgia, 373 U. S. 284 83 S. Ct 1240 (1963); Connally v General Construction Co. 269 U. S. 385, 46 S. 126 (1926).

In this action due to the vagueness and uncertainty associated with the G. S. 19-346, statute requiring lighting of public halls, the Trial Judge wandered far afield from the strict statutory interpretation required by Connecticut law ( in all actions expect where landlord/tenant relations come into being) and in effect FABRICATED HIS OWN VERSION OF THE STATUTE, one that "interacted the lack of lighting with the elevation of the chrome strip" to create a penal liability on Petitioner that was not even pleaded, nor mentioned at trial and that had never before appeared in any Connecticut statute or case!

Courts and juries may not be free to render their verdicts on the basis of subjective predilections, suspicions and conjectures.

> "Certainly one of the basis purposes of the Due Process Clause has always been to protect a person against having the Government impose burdens upon him except in accordance with the valid laws of the land. Implicit in this constitutional safeguard is the premise that the law must be one that carries an understandable meaning with legal standards that courts must enforce. This State Act as written does not even begin to meet this constitutional requirment." Giaccio v Penn 382 U. S. 399, 403, 86 S. Ct 518 (1966).

THE JUDGMENT CANNOT STAND AS A STATUTORY LIABILITY CAN BE UPHELD ONLY WHEN THE SOLE PROXIMATE CAUSE OF THE INJURY AND FURTHER THE COMPLAINT DOES NOT SUPPORT THE JUDGMENT.

Two glaring inequities or defects appear in the judgment that reflect back into the complaint.

The judgment purports to "interact" a statutory duty, the duty to light public halls with a non-statutory duty to maintain premises free from hazards.

The first defect or inquity appears in that no such "interaction" appears any where in the allegations of Para 4a - 4e that purport to set up various claims of negligence in the complaint.

"the judgment was based on an entirely different cause of action from any alleged in the complaint."

Larsen v Altnairaig Conv Home 144 C 488, 491

"a judgment may not be based on an entirely different cause of action from any alleged in the complaint."

Buol Machine Co v Burkes 146 C 639

Prior cases developed the rule that a statutory liability must be the sole proximate cause of the injury. A concurring cause will defeat recovery. In this case the Plaintiff purports as possible cause the lack of lighting of public halls. Next Plaintiff purports excessive height of carpet, yet in the trial choses to abandon this claim and without notice shift to an offer of proof of excessive height of carpet fastener.

The Trial Court having taken cognizance of all of the above goes on to base judgment on "the interaction of two conditions, the elevation of the molding at the top of the stairs and the absence of any effective lighting.

Prior cases have held under similar circumstances that the presence of another proximate cause (elevation of molding) operated to bar the liability of the statutory cause (lack of lighting of hall).

In Fabrizi, infra, the complaint alleged a statutory cause, defect in sidewalk, and a non-statutory cause, negligence in maintenance. This Supreme Court reveresed a

verdict for Plaintiff on grounds the statutory cause of action was not the sole proximate cause of injury.""

> "it must appear that the defect was not only the proximate cause, but also the sole proximate cause of the injury. The concurring cause which may defeat a recovery under the statute is not limited to the negligent conduct of plaintiff."

Fabrizi v Golub 134 C 89

An earlier case that decieded a similar point was Bartran v Town of Sharon 1899 71 C 686. In this action $806 was awarded for highway defects causing injury under a statute imposing liability on the Town for defects.

> "held the liability of the town thus created was penal in nature and as such ought not to be extended by implication to cases where the injury to traveller was caused not by the defect alone."

III. CONNECICUT GENERAL STATUTE 19-346, REQUIRING LIGHTING OF PUBLIC HALLS AT NIGHT IS UNCONSTITUTIONAL AND VOID AS LACKING ANY STANDARDS UPON WHICH DUE PROCESS REQUIREMENTS CAN BE BASED

Conn. G. S. 19-346 is part of Ch. 352 of the General Statutes, Tenement and Lodging Houses. The history of this statute dates back to 1911 P. A. Ch 220. The portion of G. S. 19-346 challenged herein as unconstitutional follows:

"the owner of each tenement house shall provide for the lighting of all public halls at night."

This statute is claimed void and unconstitutional on its face because:

1. It lacks standards
2. It fails to define "night"
3. It fails to define "provide lighting"
4. It is vague
5. It lacks sufficient clarity to act as a basis for civil prosecutions

This statute is claimed void and unconstitutional because it is applied arbitrarilly, capriciously and discriminatorilly by Conn. Trial Courts

The statute (GS 19-346) is claimed void and unconstitutional because it has been and regularly is being applied in a manner harsh and discriminatory by Conn. Trial Courts against Landlords (Defendants) as a class of persons and in favor of Tenants (Plainitff's) as a

class of persons in violation of the 14th Amendment to the United States Constitution and in violation of the Civil Rights Act of 1964.

Some but not all of the unconstitutional applications of this statute by the state courts of Conn are:

1. holding landlords liable for acts of God (heat wavies/cold/ thunderstorms/ etc.)
2. Holding landlords liable for routine failures of power line and power generating components
3. Holding landlords liable for stairs and other parts of buildin, falling outside the definitions of the State Tenement Act.
4. Holding landlords liable for any failure of electicity coming from power company generators
5. Holding landlords liable for failure of light bulbs
6. Holding landlords liable for any careless act or contributory negligence on the part of Tenant
7. Failing to apply EQUAL DUTIES and EQUAL RESPONSIBILITIES on the parts of Tenants as on the parts of Landlords.

Whereas the challenge to the constitutionality of this act and to the practice in applying this act arose out of the events of the trial and out of the act of the Trial Judge in the Memorandum of Opinion yet it is necessary as part of the disposition of the total issues of this case to dispose of as part of this appeal all of the consti - tutional challenges contained herein.

A recent case similar in constitutional challenges was reviewed on appeal although it was not pssible to the activities of the Trial as conducted by the Trial Court took place in California.

See Bayside Lumber v Bd Sup'rs San Mateo 97 Cal Rpt 431 Sept 16, 1971

"Reviewing court would pass on constitutionality of Forest Practice Act, even though such issue was not considered by Trial Court, where to fully dispose of the appeal it would be necessary to pass on the constitutional issue."

"FAilure to proscribe any standards or safeguards to prevent its abuse rendered the Forest Practice Act unconstitutional on due process grounds."

THUS THERE IS AMPLE PRECEDENT FOR THIS REVIEWING COURT HERE AND NOW TO MAKE THE CONSTITUTIONAL DECISIONS AS SET FORTH AND REQUESTED IN THIS BRIEF.

Some but not all of the acts of God or agencies obviously outside the knowledge of Landlord/Defendants that operate to indirectly or directly cause power failures, power outages, etc., for which landlords have been held liable are shown in the Defendant's Appendix Pages 6a - 38a and are described below:

1. (9a) - If federal officials are unable to cope with massive 15 state brown-outs how can landlords be held liable under G. S. 19-346?

2. (10a) - Gov Meskill asks PUC to investigage 6 brown-outs in Newington

3. (11a) - Mayor Mortensen complains of lack of notice in Newington voltage reductions.

Yet Conn. Utilities never give notice either to landlords or to tenants if electicity is interrupted to lighting of public halls!

4. (13a) - Delays in liscencing of nuclear generating plants will cause power shortages for years in Conn, yet Conn. Landlords are not responsible for liscences.

5. (16a) A short circuit knocked out power for 15,000 customers and 4,000 lacked heat at night.

How many lacked lighting in public halls of tenement houses?

6. (18a) Frigid temperatures caused 10 hour power shortage.

Massive power shortages are big news. Yet lights off in public halls of tenement houses are never reported in the news.

7. Many and varied occurrances outside the knowledge and/or control of landowners in Conn. act to knock out power going to lighting of public halls.....

| | |
|---|---|
| 20a6 | storm hits |
| 21a | power line falls |
| 22a | storm |
| 24a | winds |
| 25a | snow |
| 26a | zero weather |
| 28a | snow/winds |
| 29a | heat wave |
| 30a | transformer failure |
| 31a | 69 MPH wind |
| 33a | Guy wire broken |
| 34a | Hot humid weather |
| 36a | Tropical Storm Dora |
| 37a | Transformer failure |

All of these occurances are of common knowledge due to regular reporting by news media. This reviewing court is asked to take judicial notice of the material set forth in Appendix 6a-38a.

The concept that Connecticut statutes may be declared void and unconstitutional is not a new theory but has been upheld many times by the Federal Courts. See :

Boddie v Conn 91 S. Ct 780
Griswold v Conn 85 S Ct 1678
Cantwell v Conn 310 S. Ct 296

The concept that state statutes may be declared void and unconstitutional where they offend due process by vague ness and/or lack of standards or by reason they act to inhibit protected freedoms, such as Defendant/Appellant's First Amendment Freedom was interferred with by Plaintiff's excessive and illegal (see Snaidach, supra) pre-judgment attachment levied without notice or hearing is not a new theory but has been upheld many times by State Supreme Courts. See:

POOR

Tyre v Aetna Life Ins. 54 Cal 2d 339
Jones v Fireman's Fund 270 Cal Ap 2d 779
Cohn v Beneficial Loan 69 S. Ct 1221
Bayside Timber v Bd Sup'r San M. 97Cal R 431
Burton v Muni Court 68 C 2d 691
Staub v City of Baxley 355 U. S. 313
Hague v CIO 307 U. S. 496

"A fortiori an ordinance is unconstitutional if no standards whatever are set forth to circumscribe the discretion of officials"
In Re Porterfield 28 Ca. 2d 91

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IV. CONN. G. S. 19-346 REQUIRING LIGHTING OF PUBLIC HALLS AT NIGHT IS UNCONSTITUTIONAL AND VOID BECAUSE:

A. IT FAILS TO DEFINE "NIGHT"

B. IT FAILS TO DEFINE "PUBLIC HALL"

C, WHAT DOES IT MEAN - "OWNER SHALL PROVIDE FOR LIGHTING OF ALL PUBLIC HALLS AT NIGHT?"

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The arbitrary and capricious judgment in the state court below flies in the face of attempts by Conn. state courts over the decades since G. S. 19-346 was first adopted in 1911 to provide a reasonable and adequate standard via court interpretations in case law. What good are the best and fairest of case law interpretations made over decades WHEN THE STATUTE LACKS STANDARDS THUS PERMITING ANY NEW JUDGE TO IGNORE ANY OR ALL PRIOR CASE LAW PRECIDENTS AT HIS WHIMSEY AND CAPRICE?

OOR COPY

## A. WHAT IS NIGHT?

The evidence printed in the Appendix 4a TR 218 shows the alleged fall came well before true night or nautical twilight at 9:57 local time per the official guide, the 1968 Nautical Alminac, issued by the Naval Observatory in Washington, D. C. Yet the Plaintiff failed to introduce any evidence at all at trial as to the beginning of night and thus failed to sustain her burden of proof. This burden of proof was on the Plaintiff as Plaintiff had alleged in her complaint an allegation (Para 4b) of failure to light foyer and stairway under G. S. 19-346. Defendant entered a general denial.

Appellee attempts to purport in her Brief for the first time that G. S. 19-346 applies at sunset without any support in the evidence printed in the Appendixes nor in statutory nor case law.

Appellant submits that the statute clearly requires "the lighting of public halls at night". Perhaps the clearest indication of the distinction between day, twilight, and night is given in the dictionary.

Funk & Wagnalls STANDARD ENCYCLOPEDIC DICTIONARY

Twilight : the light between day and night.

Obviously a simple reading of the statute and the dictionary would start the statutory obligation on June 30th, 1968 at 9:57PM EDT in accordance with the official standard for the sun, the 1968 Nautical Alminac.

NEVERTHELESS PRIOR COURTS HAVE FACED THIS QUESTION - WHAT IS NIGHT? - AND THE SUMMATION OF THEIR INTERPRETATIONS BOTH UNDER GS 19-346 AND BURGLARY STATUTES BOTH UNDER CONN. LAW AND UNDER FEDERAL LAW AND UNDER LAW OF OTHER STATES SUPPORTS APPELLANT'S CLAIM THAT THE ALLEGED FALL DID NOT COME DURING THE "NIGHT"

Many courts over the centuries have been bedeveled with the question of when night begins under many factual situations. One of these is quoted below:

Gibson v Hopman
1928
143 A 635

"night" when not enough daylight to discern a man's features"

The trial court correctly so ruled, but held that there was a lack of evidence that the time when the plaintiff fell was "at night," and this was one of the two grounds upon which a defendants' verdict was directed.

[5] The word "night" is susceptible of various interpretations. In this state, as elsewhere, a burglary has been held to have been committed in the "night," when there was not daylight enough to enable one to discern the features of a man. State v. Morris, 47 Conn. 179, 180. But that definition, arbitrarily adopted and of itself open to criticism, hardly affords an apt criterion for such a case as this. We cannot fix a definite time after sunset when night shall be deemed to begin, as has been done by legislative act in a number of states. 5 Words and Phrases, First Series, p. 4808; 3 Words and Phrases, Second Series, p. 614. One of the accepted definitions of "night" includes within it the period from the termination of daylight in the evening to the earliest dawn the next morning. State v. Bancroft, 10 N. H. 105; State v. McKnight, 111 N. C. 690, 692, 16 S. E. 319. The purpose of the statutory requirement we are considering was obviously to safeguard the occupants of tenement houses and others having lawful occasion to traverse the halls and stairways within them and to assure them a safe passage, and, as it ordinarily gets dark more quickly within buildings than it does in the open, to attribute to the word "night" as used in this statute the meaning last suggested would fall far short of accomplishing the purpose of the provision, leaving, as it would, a period of darkness in the evening and another after dawn, when the statute would not apply

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Earlier cases went on to hold under burglary prosecutions that night did not officially begin as long as a person's countenance can be reasonably discerned ....

VIA DAYLIGHT OR TWILIGHT!

2 East's P. C. 509, 1 Hales P. C 550.
State v Bancraft 1939 10 N. H. 106

Another case in 1892 explored the same question - "What is night?" for purposes of a breaking and entering conviction. The evidence showed....

> ..it was dark except for what light was given by the moon.... the lamps were lighted...

State v McKnight 16 S. E. 319

The evidence as printed in the Appendixes in this case under the rules above supports the the time of alleged fall was not at night as.....

> "she had no difficulty going up exterior step, going into entry door, crossing lobby" 4a TR 236
>
> "she noticed the silvery beam created by the metal nosing before her fall." 4a TR 234
>
> "she did not know if the street lights were on" TR 221

Sir William Blackstone (4Bl Comm 224) has given us what seems the best definition of night saying ....."anciently the day was accounted to begin only at sunrising, and

to end upon sunset, but the better opinion seems to be that, if there be daylight enough begun or left to discern a man's face withal it is no burglary."

And Lae Dic 709
Com v Chevalier 7 Dan Akr 134
People v Griffin 19 Cal 578

Considering each of these tests it seems Blackstone provided t he most enlightened definition of night for purposes of this action, and under his definition the judg ment cannot be sustained. It should be noted that some states such as Mass. and New York have statutes for lighting public halls that spell out lighting to start at sunset. Obviously the Conn. legislature could have also done so but instead chose to use the standard of night to start the statutory obligation running.

The law is clear that lacking a statutory requirment there is no obligation on a landlord to light public halls. The reason is that to permit nigligence to be based upon a failure in this regard would be to impose too onerous a burden upon landlords. Capen v Hall 21 R. I. 364.

WHAT IS A PUBLIC HALL?

Plaintiff's complaint purporting to be based on G. S. 19-346, a part of the State Tenement Act, must be construed with other parts of said act.

The statutory def inition of 19-346 (6) fails to include stairs or basement stairs or cellars within the definition of public halls. Nevertheless, Conn. state court "interpretations", always showing kindness to tenants and unkindness to landlords, have construed stairs leading up and into the upper floors of tenement houses to be "public halls" and meanwhile construed stairs leading down into cellars and cellars or basements (such as the one Plaintiff allegedly fell into herein) not to be public halls.

"Lighting of cellars not required"
Delaneyv Shimelman 111 Conn 22

" Lighting of veranda not required"
Carrington v Bobb 121 Conn 258

""Rear Porch Included"
Comach v Lomas & Nettleton 6 Conn Sup 368

The case that is most analogous to the facts herein is Delaney v SHimelaman 111 Conn 22. So clearly and succintly did Delaney, supra, outline the reasons why a fall in a basement hall did not come under the purview of G. S. 19-346 when all parts of the State Tenement Act are construed together that pertinent parts of the Opinion are reproduced Below.

111 Conn. MARCH, 1930. 25

Delaney v. Shimelman.

2563 and 2567, which reads, so far as applicable, as follows: "'Public hall' means a hall, corridor or passageway not within an apartment." "The owner of every tenement house shall provide for the lighting of all public halls at night." The court told the jury that "a public hall is defined by the statute as a hall, corridor or passageway not within an apartment.

Delaney v Shimelman 111 Conn 22 continued:

This common cellar evidently comes within this definition, being a passageway through which the tenants must pass to reach their several cellars," and this charge is assigned as error. Upon the assumption that this portion of the cellar was a "common passageway," the court told the jury it was the statutory duty of the defendant to light it at night. The portions of the statute which we have quoted are a part of Chapter 133 relating to tenements and lodging houses. The so-called "Tenement House Act" is Chapter 134, and to determine what the intent of the legislature was in thus requiring a light to be maintained by the landlord, we may and should refer to this Act also, since it gives the same definition of a "public hall." In § 2585 there are other and specific requirements as to "public halls." We find that "public halls upon each floor shall be provided with a window or a glazed door, opening to the street, the yard, or upon a court . . . unless the hall is within three stories from the roof. . . . All doors leading from public halls not provided with outside windows, and more than two stories below the roof, shall be provided with translucent glass of an area of not less than five square feet for each door, or with fixed transoms of translucent glass of an area of not less than five square feet over each door, or such halls shall be lighted by an equivalent amount of translucent glass connecting with a lighted room or rooms. Long and devious hallways shall have such additional provisions as may be necessary to give ade-

quate light, subject to the approval of the building inspector." Again, in § 2586, "one at least of the windows provided to light each public hall or part thereof shall be at least ten square feet in area. . . . Where the public halls upon each floor are not provided with windows opening directly to the outer air, there shall be in the roofs, directly over each stair-well, a ventilating skylight." We think it is manifest that the legislature did not intend these provisions to apply to an open cellar, but they have the same application, no more nor less, than the provision for maintaining a light at night, and if they do not apply, neither does the latter requirement. Moreover, the Act defines "public halls" and "cellar" separately—§ 2570—and we find no intent to merge the latter with the former at any point in the Act. There are separate and specific provisions as to the cellar, as that its floor shall be watertight and the ceiling plastered save where the first floor above has iron beams and fireproof filling—§ 2590—provisions entirely foreign to a hall or passageway. We cannot concur in the conclusion of the trial court that the statute—§ 2567—made it the duty of the landlord to provide for the lighting of this cellar at night, and must hold such direction to the jury to be reversible error.

"We think it manifest the Legislature did not intent these provisions to apply to an open cellar:" Delaney, Supra.

Based on the strength of Delaney, supra, the decision below must be reversed.

WHAT DOES IT MEAN -"OWNER SHALL PROVIDE FOR LIGHTING OF ALL PUBLIC HALLS AT NIGHT"?

A careful and literal reading of "provide for" would indicate to a reasonable person that a means of lighting the public halls must be provided for by the owner.

Yet under the facts of this action the Trial Court held Appellant liable for failure of electricity from HELCO generators due to heat wave or some other problem (see App. G) also 6a. There was no malfunction of lighting equipment TR 329. There was ample light within the meaning of the State Tenement Act via compliance with G. S 19-346 (see P 20 Appellant's Brief) via large translucent glass entry door and side lights providing sunlight by day and direct light from street lights by night, street lights mounted right outside entry door. Thus even with internal lights off the tenants entered and left the building without complaining . TR 352.

The fact that the building is which Mrs Bitonti allegedly fell conformed in all respects with the State Tenement Act, is demonstrated by G. S. 19-347r quoted :

**PUBLIC HEALTH AND SAFETY**

**§ 19-347r. Certificate of occupancy required for lawful occupation. No rent recoverable during unlawful occupation. Exceptions**

(a) No apartment in any apartment house containing four or more housing units in any municipality which adopts the provisions of this section by vote of its legislative body shall be occupied for human habitation, after a vacancy, until a certificate of occupancy has been issued by the person designated by such legislative body of such municipality to administer the provisions of this section, certifying that such apartment conforms to the requirements of the applicable housing ordinances of such municipality and this chapter: . . .

Obviously the construction in 1964 of glass entry and side lights meet the requirments of G. S. 19-347r and in conjunction with the hall lighting system and time clocks the requirments of G. S. 19-346 were met as to both basement or cellar and as to the upper floors of the building. The evidence printed in the Appendix 6a/7a shows the Building Department of the City of Hartford inspected and approved the installation prior to issuance of a Certificate of Occupancy about March 1964.

A case most similar factually to this action involved a lack of stair hall lighting although the Plaintiff recieved adequate light from her kitchen. Due to its remarkable similarity the pertinent parts are repeated.



sary to see whether substantial injustice to the plaintiff has been done. *Croughwell* v. *Chase Brass & Copper Co.*, 128 Conn. 110, 112, 20 Atl. (2d) 619. The trial court found that at about 7:15 p.m. the plaintiff came from her kitchen on the second floor of the premises, carrying a plate of garbage to be disposed of in the rear yard; that she descended the stairway, leaving the door of the kitchen open; that in the kitchen was a lighted electric bulb; that while her left foot was on the third step from the landing at the bottom she brought her right foot down to the second step, it slipped and she fell to the bottom of the inside stairway; and that the light conditions were

Feeney v Perelmutter 128 Conn 573cont.

such that she knew and saw the position of her feet on the stairway at the time she fell. On the basis of these facts the court found that the stairway was reasonably well lighted at the time. The effect of the last finding is that there was sufficient light in the stairway to afford the plaintiff reasonable protection in coming down the stairs. If this is so, any failure of the defendant himself to provide light for the stairway is not of consequence. *Kristiansen* v. *Danbury*, 108 Conn. 553, 559, 143 Atl. 850.

There is no doubt but that the facts herein fit Feeney, supra. Plaintiff Bitonti testified she saw the metal carpet edging as she walked across the lobby "as a slivery beam reflecting the street light". Appen. 42 TR 234. That she had no difficulty crossing the lobby. 4a TR 236. Miss Christian 7a testified she had no difficulty descending the stairs as sufficient artifical light came through the glass entry door from street light just outside . TR 123.

In Feeney, supra, a claim was made that Plaintiff fell over a foreign substance on the stairs but this claim was rejected on grounds there was no evidence as to how long it was there nor that the Defendant should have had notice.

Laflin v Lomas & Nettleton 122 C 61,63

Thus Feeney, supra, fits another essential part of this case. This Defendant had no notice from any tenants that lights were out. Appendix 6a. TR 352. The testimony failed to

establish exactly when the lights went off and when the went on. Appendix 7a TR 156.

ON STRENGTH OF PEENY SUPRA THE JUDGMENT BELOW SHOULD BE REVERSED.

The Plaintiff failed to sustain her burden of proof.

Yany v W. Hartford 111 C 26, 27

An earlier case, Iudica v DeNuzzo 115 C 233, faced squarely this issue of "What does it mean ? - Owner shall provide for lighting of all public halls at night"

In Iudica, supra, the court took note that some states via their statutes obligated the lights in public halls to be kept burning all night.

Schindler v Welz 130 NY Supp 344, 345
Pesin v Jugovich 85 N. J. L 256
Vallen v Cullen 238 Mass 145

The failure to keep lights burning in hallways under those statutes, if the proximate casue of the injury, would be actionable negligence.

However, the Connecticut statute contains different language...."the owner of each tenement house shall provide for lighting of all public halls at night."
Gibson v Hopman 108 Conn 401, 405.
The landlord's duty is to use reasonable care to keep the lights in the fixtures lighted.

The Iudica, supra, case was based on a lighting outage due to blown fuse just as this case was based on a power outage due to an act of HELCO or an act of God affecting HELCO's equipment delivering electricity. The Iudica case held for the landlord on grounds under the circumstances there was no actionable liability under the statute on landlord's part.

The Iudica case similar to this action failed clearly establish the cause of Plaintiffs fall.

> "The court could not permit the jury to speculate as to the cause of the Plaintiff's fall."
>
> Iudica supra at P 236

---

V. CONN. G. S 19-346 IS UNCONSTITUTIONAL AND VOID BECAUSE THE LANDOWNER IS OBLIGATED TO GUARANTEE ELECTRICITY FROM PUBLIC UTILITY GENERATORS DESPITE ACTS OF GOD.

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Prior cases construed that mere presence of light fixtures is not enough, reasonable care must be used to keep the lights on.

Muitz v Lulewicz 133 Conn 355.

Yet prior cases held landlord not liable where lack of knowledge existed. Only where landlord knew of the condition and failed to take action was liability imposed.

Jones v Perlstein 138 Conn 381

Prior Conn. court cases consistently held a landowner is not an insurer of all persons, who make use of his property.

"Tenant assumes risks of structural defects except those he cannot discern."

Des Marchais v Daly 135 C 623
Colletee v Piela 141 C 386
Masterson et al v Atherton 149 C 307
Civale v Merien Housing 150 C 594

" Duty of landlord is to make reasonable inspections"
131 C 559

In this case Appellant employed a rent collector (Appendix 6a) who make a weekly safety inspection and reported lights out and they were then put on again. TR 330.

The Appendix, G1 - G 30, clearly depicts the nature of power outages causing failure of lighting systems without any notice to landlowerns. See

G4 11a : Mayor Mortenson of Newington complains of lack of notice of C L & P brownouts.

G3 10a : Governor Meskill asks PUC to investigate blackouts

G2 9a : Federal Officials unalbe to control power outages.

What notice does a typical tenement house owner get of power outages? Obviously none! What power does he have to cope with black outs? Obviously none!

On the grounds as set forth hereinabove the arbitary and capricious G. S. 19-346

should be declared void and unconstitutional for vaguness and lack of standards to meet the test of due process. The onerous and unjsut judgment below under conditions of power outage are powerful argment that this statute is unconstitutional.

An earlier case, Civale v Meridan Housing, 150 C 594 involved a landowner who made an annual inspection and made repairs as requested to do so. There was no liability imposed on this landlord thus creating two strong inferences:

1. An annual safety and maintenance inspection as a minimum meets the obligation to maintain premises safe for tenants.

2. It is the duty of tenants to call for repairs as needed as tenants live daily on premises and are in effect in control as it is the tenants call that triggers the sending of a man to do repairs.

Under the rule of Civale, supra, Appellant herein using a weekly safety and cleanliness inspector who made a report far exceeded the standard set up for a resonable and prudent man. The record 6a TR 330 shows that on discovery of lights being out that the time clock was reset and the lights put on again.

May the judmgment be reversed based on Civale, supra.

VI. PETITIONER WAS DENIED DUE PROCESS AS THE STATE COURT JUDGMENT WAS "SPECULATIVE" AND NOT SUPPORTED BY THE EVIDENCE AS RESPONDENT ADMITTED SHE DID NOT KNOW WHAT CAUSED HER ALLEGED FALL.

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The sequence of events as developed by the evidence printed in the appendix is a simple one.

Plaintiff did not know what caused her fall. TR 230-232 (4a)

Prior to alleged fall Plaintiff drank gin and fought with her boy friend. TR 207, 210-216 (4a)

Lights were off due to power outage the equipment did not malfunction. TR 330, 360, 363. (6a)

In prior cases speculation such as herein as reversed by this court.
Margarian v Bessoni 160 C 442.

There is not a single scintilla of evidence in the record to show that Plaintiff would not have fallen if the hall lights had been

on or if another fastener was used on the carpeting. In fact the transcript showed this fastener to be commonly used on carpets and there is no evidence that another fastener is available.

"an act or ommission can hardly be regarded as the cause of an event which would have happened if the act or ommission had not occurred."
Shaughessy v Morrison 116 Conn 661

"The court is not concered with hypothetical possiblities but with reasonable probabilities"
Richander v P & W Mfg 120 C 669
Drummon v Conn Co 84 C 531
Dickson v Yale U 18 Conn Supp 244

"No recovery can be had in a tort action where there are several possible causes of injury some not involving the negligence of the party charged, if there is no evidence from which it can be determined which of several causes produced the injury"

Shipley v S. Pacific Co 193 NE 2d 862

The record clearly shows Plaintiff did not know what caused her allegad fall. 4a TR 230:

Q- I am not asking what it has to be, I am asking whether you know for a fact whether you tripped on the metal strip?

A- Not for a fact, no.

It was incumbent upon Plaintiff to remove the issues from the realm of surmise, guess, conjecture and speculation.
Lombardi v Bergren Dairy 153 C 19, 25
Guthreau v NY NH H RR 148 C 65, 66
Gillette v Plante Properties 349 Mass 760

VII. PETITIONER WAS DENIED DUE PROCESS BY TRIAL JUDGE WHO REFUSED TO FOLLOW ESTABLISHED STATE CASE LAW IN REGARD TO AGENCY, HEARSAY TESTIMONY, THE CONN. STATUTE OF LIMITATIONS, AND THE AFFECT OF G. S. 52-94 WHERE PLAINTIFF FAILED TO ANSWER DEFENDANT'S AMENDED ANSWER WITH NEW SPECIAL DEFENSES.

---

This Brief, supra pages 20 - 21 - 22 treat that Due Process requires an understandable meaning in the state law applied in accord with constitutional safeguards with statutes being applied with certainty free of vague irrationalities.

A main thrust of Petitioners petition for Certiorari is that the State Court Judge below denied due process by persisten and unprovoked refusals to follow established state statutes, the established rules in the Conn. Practice Book and soundly established Connecticut case law. As a result the Trial Judge literally flung Petitioner into an unconstitutional judgment that Petitioner contends is void for denial of due process. In this point VII of his Brief Pettioner explores some of the ways the Trial Judge denied due process by deliberate violations of established Conn. law.

PLAINTIFF FAILED TO SUSTAIN HER BURDEN OF PROOF THAT SHE WAS "LAWFULLY ON THE PREMISES' AS ALLEGED IN HER COMPLAINT PARA THREE.

Plaintiff's complaint is based on being "lawfully on the premises" to which Defendant entered a general denial thus putting the burden of proof on Plaintiff.

Plaintiff's sole effort at trial was to introduce hearsay evidence objected to strenuously at trial by Appellant's attorney. Appendix 5a TR 95-99. The closest statements (altho hearsay) made by Plaintiff were to the effect that the superintendent's wife "didn't care if she stayed a few days with Mrs Russack". Appendix 5a TR 12-14, TR 148-149.

Such an offer of proof is contrary to the practice book, to case law, violates the laws on agency, violates the laws of hearsay, and is generally inadequate and incompetent to prove Plaintiff lawfully on the premises. The Trial Judge with persistent bias to Plaintiff/Tenant as a class ignored or overruled the objections and persistently and somewhat irrationally ruled in favor of Plaintiff on each issue.

APPELLEE VIOLATES CONN. PRACTICE BOOK S 71

> "The act or promise of a principle if in fact proceeding from an agent known to the pleader, should be so stated"

Obviously the minimum requirements of S 71 never appeared in the complaint nor in the evidence in support of judgment.

"Agency must be alleged"
70 C 261; 99 C 527; 72 C 395

"Objection should be made to offer of evidence to prove agency"
70 C 262; 81 C 496; 99 C 644

In the trial Appellant's attorney repeatedly objected to use of hearsay evidence and incompetent evidence purporting to show rental agent "didn't care" if plaintiff occuppied premises for a few days.

Connecticut cases make it clear that apparent authority is to be determined, not by the agent's own acts, but by the acts of the principle. In this action not only did not the agent's acts or verbal statements form a basis for a legal occupancy by Plaintiff nor by any stretch of the imagination could such an off-hand and careless remark be construed to be an anuthorization by the principle, the Defendant herein.

The very statement is irrelevancy itself to the proper authorization of occupancy.

Quint v O'Connell 89 Conn 353
Washington Cedar & Fir Products 91 C 350
Zazzaro v Univ. Motors 124 Conn 105, 110
Fireman's Fund v Longshore Beach 127 C 493
Presta v Monnier 145 C 694
Bogert-Moran Sales v Red Bird Truck
149 Conn 42, 44

PLAINTIFF'S COMPLAINT IS BARRED BY STATUTORY MANDATE OF G. S. 52-94 IN THAT DEFENDANT'S AMENDED ANSWER 2/13/70 CONTAINED THREE NEW SPECIAL DEFENSES NEVER REPLIED TO BY PLAINTIFF.

Appellee appears to concede the power of G. S. 52-94 prohibiting actions such as herein.

Tracy v NY, NH & H RR 82 Conn 1
Downey v Moriarity 89 Conn 226

Appellee goes on to hold the Reply filed January 16, 1970 as applicable under Conn. P. B. Section 133. Under the facts of this case Appellant does not dispute the Reply as being applicable to Special Defenses that were REPEATED in the Amended Answer. Nevertheless three brand new special defenses were set forth in the Amended Answer to which P. B. Section 133 does not apply.

## SUMMARY OF ARGUMENT

The judgment below is replete with violations of Petitioner's federally protected fundamental rights to due process of law as set forth hereinabove. A substantial federal question of Nationwide importance is the constitutionality of statutes requiring lighting of public halls at night. Another substantial federal question of nationwide importance is where a state has adopted a State Tenement Act and/or a State Building Code and a building built in full compliance therewith can a state trial judge effectively "amend the law" or "make his own law" by establishing his own personal "building code" upon which he imposes liability for damages.

The construction industry is perhaps the biggest in the nation with billions of dollars of annual work and millions of workers. Housing is one of the most vital and fundamental needs of all both rich or poor. This industry should not be left to suffer and to stagnate in the grip of unconstitutional and illegal state court practices that deny due process and deny equal protection of the laws.

## CONCLUSION

In reviewing the issues herein and reasons for granting this Petition this court should be mindful that by its own admission the Conn. Supreme Court "Did not understand the issues" where only days later this court upheld identical federal issues in Tucker v Maher, 405 U. S. _____ . See Page 6 supra.

For the foregoing reasons it is respectfully submitted that this court should grant the Petition for Certiorari.

Respectfully Submitted:

STANLEY V. TUCKER/PETITIONER

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STATE OF CONNECTICUT

SUPREME COURT

HARTFORD COUNTY

April Term, 1971

# 6954

ELIZABETH ANN BITONTI

v.

STANLEY V. TUCKER

APPENDIX FOR

DEFENDANT-APPELLANT

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A. Elizabeth Ann Bitonti called as witness by the plaintiff testified on CROSS-examination in part substantially as follows: * * * That she resided at 38 S. Whitney four days prior to alleged fall TR165* * That on June 30th, 1968 she was making $2/hr TR 171 * * That she had an upper plate since she was age 16 TR 161 * * That she had a clicking of her jaw TR 201 * * That just before the alleged fall she was drinking gin and orange juice TR 207 * * That immediately after drinking she quarreled in her boy friend's room, striking stereo, slamming door and yelling on way down walk TR 210-214 * * The quarrel was so violent that the Landlady, Mrs Gulliksen called upstairs TR 216 * * That she arrived at the site of alleged fall 9:20 pm TR 218 * * That on arrival at 38 S. Whitney she had no difficulty going up e exterior stp, going in entry door and c crossing lobby TR 236 * * She contradicted herself as to whether she tripped on heel or Toe TR 224 * * The alleged bed spring was in the hall from the day after she & Mrs Russak moved in TR 227 * * She did not know who put the bed spring in the hall TR 228 * * She did not know what caused her fall TR 230 -232 :

Q I am not asking what it has to be, I am asking whether you know for a fact whether you tripped on the metal strip?

A Not for a fact, no.

She had noticed the silvery beam created by the metal nosing before her fall TR 234 * * She did not know if her shoe came off TR 231 * * She was feeling for the handrail TR 237 * * with pocketbook in hand

TR 252 * * on DIRECT examination Mrs Bitonti testified in part substantially as follows * * That the Superintendent's wife said she didn't care if Mrs Bitonti stayed with Russak TR 12-14, TR 148-149 This testimony was STRENUOUSLY OBJECTED TO AT TRIAL AS HEARSAY. TR 95-99. On RE-DIRECT examination Mrs Bitonti testified in part substantially as follows * * That Mrs Russak changed double bed for twin beds prior to alleged fall TR 254.

B Mrs Russak (Brewer) called as witness for Plaintiff testified in part substantially as follows * * That she left Plaintiff at the tavern at ten to nine a scant 30 minutes before the allged accident TR 270 * *On CROSS-examination Mrs Russak (Brewer) testified in part substantially as follows * * That no complaint was ever made that lights were off TR 277 * * Mr Wallace, attorney for Defendant, repeatedly sought to introduce questions condern-ing the veracity of Plaintiff especially in respect to Plaintiff's misappropriation of rent money TR 284 - TR 292 and repeatedly the COURT excluded the questions.

C. Mr Leiper, PROFESSIONAL ENGINEER, called as witness for Defendant testified in part substantially as follows on DIRECT examination * * He described his professional qualifications and inspections and measurements at 38 S. Whitney TR 297 - TR 298 * *The particular method of fastening the carpet down with metal nosing was a superior method from the safety standpoint TR 302 * * The metal nosing was rounded and the toe slid easilly over it TR 303. With interior lights out and illuminated by street

light shining through glass entry door the metal strip was distinct as a line of light across the surface of the foyer TR 307 * The handrail projected right to the top of the landing so anyone standing there would have no difficulty grasping the handrail TR 308 TR 309 * * The installation of carpet, handrail, stairs and metal did not present any unusual hazards to anyone using reasonable care TR 311.

D. Stanley V. Tucker, called as Witness for Defendant testified on DIRECT examination in part substantially as follows * * That Defendant employed part time a rent collector who weekly made inspections for safety and cleanliness TR 328 As a result of this weekly safety inspection Defendant discovered lights were out TR 329 * * There was no malfunction of lighting equipment but apparently a power failure, or some interruption of power TR 330. Upon receipt of report that lights were out the timer was reset and the lights on again. TR 330 * * None of the tenants ever contacted Defendant as to lack of lighting TR 352. The cause of lack of lighting was an outage of some type, such as a heat wave, power interruption or storm. Until HELCO turned on the power there was nothing anyone could do TR 361, TR 362.

Stanley V. Tucker, called again as witness for Plaintiff testified on Direct examination in part substantially as follows * That the interior dimensions of the interior hallways and stairwell were built under the Building Code of the City of Hartford TR 54 Tr 55 * * That the carpeting and lighting were installed in 1964

and there was no change up to the date of alleged injury TR 57 TR 58 * * That the stair going down served only two basement apartments TR 60 * * The Building Department of the City of Hartford inspected and approved the stair and carpet installation prior to issuance of Certificate of Occupancy about March 1964 TR 67.

F. Mrs Schaal called as a witness for Plaintiff on DIRECT examination testified in part substantially as follows * * That she believed a light bulb was out TR 155 That this condition lasted about two weeks and she was unsure of the start and stop date TR 156 * * on CROSS examination she testified in part substantially as follows * * That there was a mattress not a bed spring in the hall, and she and her roomate moved it to the location where Mrs Bitonti allegedly fell against it. TR 159 * * That she never complained about the lighting TR 164.

G. Miss Christian called as a witness for Plaintiff testifed on CROSS examination in part substantially as follows * * That she had nof difficulty descending the stairs with interior lights out TR 123 * * Because sufficient artificial light came throught glass entry door from street light just outside TR 124.

VOL. 68. NO. 24
LIFE
DECEMBER 11, 1970

# THE CRISIS IN POWER

**We have barely enough electricity to go around, and our chances of getting more soon are dim**

BRISTOL PRESS - September 30, 1970

# Federal Officials Fretting Reliability Of U.S. Power

Editor's Note: Last week's four-day "brownout" has generated doubts about America's electric power system. In this in-depth report, a member of the AP Special Assignment Team reconstructs the events of last week and delves into the reasons for the nation's persistent power shortages.

By G. DAVID WALLACE
Associated Press Writer

WASHINGTON (AP) — The widespread power shortage on the eastern seaboard last week has left federal officials fretting over the reliability of the nation's electric power system.

Massive generator failures combined with maintenance shutdowns brought the four-day "brownout" affecting 15 states.

Last week's brownout was the nation's eighth significant power shortage of the summer. Northeastern states were hit hardest and most often, but shortages were felt at times during the summer as far west as Wisconsin.

It could have been worse. "I think we were lucky we had a relatively mild summer," said an official of the Office of Emergency Planning. "I think there was a minimum of disruption."

The OEP had warned in May as possible power shortages. Reserves of 15 to 20 per cent are considered adequate but the seven others in Pennsylvania and New Jersey.

Early in the day steam pressure collapsed on one generator, the turbines failed on another. A faulty pump feeding the boiler forced a third to operate at reduced capacity. By 10:15 a.m., the temperature was rising toward the mid-90s, air conditioners were humming all over the Eastern megapolis and utilities were reaching into Illinois and Ontario for power. It wasn't enough. Power was reduced by 3 per cent. Six minutes later it was reduced by another 2 per cent.

generators were repaired and the heat slackened. But questions remained: Why did it happen? Why is the nation faced with persistent power shortages?

Officials at the Federal Power Commission pullout elaborate charts to show how utilities plan a year ahead, with monthly reviews, to perform preventive maintenance on generators. Reserves are so small that all the work must be squeezed around the summer to get it done, said Cleve R. Jacobsen, chief of the FPC's section of interconnection and coordination.

Legislative News

# Governor Asks PUC to Probe Repeated Newington Blackouts

By CHARLES F. J. MORSE

Gov. Meskill late Tuesday called on the State Public Utilities Commission to thoroughly investigate the repeated power failures which have blacked out Newington.

Acting on a request by State Sen. Roger Eddy, State Rep. Elmer Mortensen and other angry Newington citizens, Meskill asked the PUC to probe power failures at the East New Britain sub station of the Connecticut Light & Power Co.

PUC Chairman Eugene S. Loughlin was requested to report within 10 days.

"It has been reported to me that there have been six major power failures since Dec. 13 in the Newington and surrounding areas," Meskill wrote Loughlin.

"Electric power is a life line to our citizens. The loss of such power creates financial and personal hardship to thousands of residents," the governor stressed.

"I want you to inform me of all pertinent facts regarding the causes of these failures and to outline for me the steps that can and are being taken to correct this deplorable situation," he directed.

Eddy, in the wake of two blackouts Monday, said he would officially request the governor to set a PUC probe in motion.

The senator disclosed that additional information obtained since he toured the East New Britain substation last week "indicates some facts may have been withheld."

Light company officials blame a fire at the substation on Dec. 13 as the cause of the numerous blackouts. Eddy said that the facts he has obtained, "if true, should be made public."

Monday night's blackout of about one hour between 5 p.m. and 6 p.m. was followed by a second at 6:45 p.m. Power was restored to about one-third of the area at 7:05 p.m. and the rest of the area by 7:20 p.m.

A total of 2,964 customers were affected, according to the light company.

# Newington

## Unannounced Power Cut Spurs Letter to CL&P

NEWINGTON — Mayor Elmer A. Mortensen has complained to the Connecticut Light and Power Co. about last Sunday's reduction in electrical power in town.

In a letter Wednesday to CL&P President Anthony Wallace, Mortensen said he and the Police Department had received numerous queries about the brownout. The mayor added that they had been unable to offer explanations because the town was not warned of the power company's action in advance.

Mortensen said it had been agreed in the past that the town would receive advance notice of interference with normal electrical service that might result from repair work.

"Any such reduction is an inconvenience to the residents of Newington," the mayor stated, "but it is especially frustrating when such a reduction or interruption occurs without prior warning."

The mayor said he hoped CL&P would notify the town far in advance of future planned work that would require power cuts or shutdowns.

Vol. LXIX No. 19 NOVEMBER 9, 1970

U.S. NEWS & WORLD REPORT

# A POWER-SHORT WINTER?

## Interview With Charles F. Luce, Head, Consolidated Edison of New York

**Are brownouts and blackouts a threat in the U. S. this winter? Are Americans faced with a choice between meeting expanding demands for electricity and conserving the environment?**

**For an inside look at the power crisis, "U.S. News & World Report" invited Charles F. Luce, a utility executive with wide experience, to its conference room for this exclusive interview.**

**Q Mr. Luce, as one who has dealt with problems of electric power from one coast of the U. S. to the other, how serious do you consider present power shortages?**

**A** Very serious. As I look around the country, I see that many, though not all, large population centers have actually experienced power shortages or come very close to it as generating reserves have dropped below what they ought to be.

In September there were voltage reductions or selective localized blackouts all the way from Virginia to Massachusetts. In the past year there have been voltage reductions on the East Coast, in the Tennessee Valley Authority system, the Southeast, Chicago and elsewhere. In the Pacific Northwest there was curtailment of some industrial load.

**Q Do voltage reductions cause what are commonly called brownouts?**

**A** That is correct.

**Q Are you saying that the power crisis is virtually nationwide?**

JOURNAL INQUIRER - November 17, 1971



# New England Faces Power Drain Threat In License Delays

SPRINGFIELD, Mass. (UPI) — New England faces the threat of electric power shortages for the next few years because of delays in licensing nuclear generating plants, according to a power company executive.

The so-called "Calvert Cliffs" decision, interpreting the National Environmental Policy Act of 1969, was a case of "changing the rules in the middle of the game," he said.

amount to an increase of about 5 per cent in the cost of power, he said.

The Vermont Yankee plant, which is ready to go, Galligan said, was an "outstanding example of a unit that's ready to run, except that it is caught in this tangle of environmental hearings."

The power company executive emphasized that electric utilities are not opposed to environmental reviews of their plants but are concerned with the timing and the effects of delays on the power supply.

Galligan urged improvement in nuclear plant licensing procedures and proposed that plants which are licensed or ready to go be permitted to operate while the AEC conducts the additional environmental review.

TORRINGTON REGISTER : November 17, 1971

# Utility companies blame AEC for predicted power shortages

By A. STEVEN PERELMAN

WEST SPRINGFIELD, Mass. — Utility company officials from New England Tuesday predicted potential critical power shortages for the entire region this winter, and for the next several years, and placed the blame on new regulations of the Atomic Energy Commission (AEC).

Thomas J. Galligan Jr., president of Boston Edison Co. and a spokesman for the New England Power Exchange (NEPEX) said enforcement of the AEC's new environmental impact regulations for nuclear plants should be delayed or "we will not be able to meet our commitment: providing power for New England customers."

Court interpreting the 1969 National Environmental Policy Act, the so-called "Calvert Cliffs" case will cause probable delays in the licensing of three nuclear power plants in the region scheduled to go into operation in the next six months.

That decision, Galligan said, "jeopardized the power supply in New England and in the whole country." It will probably mean rate increases, he added.

The utility industry solution, as outlined by Galligan, is to let the plants go into operatoin, while the AEC conducts their review, and if changes are need-

See UTILITIES, Page 17.

# Energy Crisis

Editor's Note: Why does the United States face an energy crisis? This article from the AP Special Assignment Team answers that and other questions.

WASHINGTON (AP) — On Nov. 9, 1965, the northeastern United States went from dusk to midnight in 11 minutes. It was the first major public signal that the nation's tremendous need for energy had outstripped the ability to provide it.

Since the 1965 blackout, the crisis has intensified.

The nation which put four men on the moon hasn't got enough electrical generating capacity to insure sufficient heat, light and power for its cities. The nation richest in natural resources and the technology to utilize them has not been able to keep up with its own demand for natural gas, fuel oil and coal.

An Associated Press study of the energy crisis in the United States has found:

—The nation's over-all demand for electric power doubles every 10 years with per capita demand growing five times faster than the population. The nation has become so dependent on power that human labor now provides energy for less than 1 per cent of the work done in the nation's factories.

—Many of the electric utilities which opted for nuclear power were using coal. The coal companies found new customers outside the country. New air pollution laws and mine health and safety laws caused cutbacks in expansion of coal production. When nuclear power ran into delays and electric utilities turned back to coal, they found the supply critically short.

The declining supplies of the fossil fuels—coal, fuel oil and natural gas—coupled with increased national demand for power, converged with a vengeance on 1970. This may go down as the year there was an overwhelming demand for everything and an adequate supply of nothing.

One sure sign of the decreasing certainty of plentiful electric power is the decreasing ability of electric utilities to handle unexpected crises like severe weather and equipment failures. It was equipment failure that triggered the 1965 blackout in the Northeast. It was a combination of equipment problems and unseasonably hot weather that caused brownouts and selected blackouts along the East Coast last September.

HARTFORD COURANT : DECEMBER 14, 1970

# 4,000 Families Suffer Chilly Night in Blackout

About 4,000 customers of Connecticut Light & Power Co. in Newington and Berlin bundled in blankets Sunday afternoon and evening after a fire and short circuit at a CL&P substation knocked out power about 3:15 p.m.

The blackout was the second of the day. The first left between 12,000 and 15,000 customers without power for about an hour after a short circuit and fire at the East New Britain substation.

A second fire and short circuit wiped out power for about 13,000 customers in the afternoon but power was restored to about 9,000 between 5 and 6 p.m.

All power was restored Monday at 12:40 a.m.

At 10:15 p.m. Sunday, CL&P officials started interrupting service for about 2,500 customers in north Newington to shunt electric power to some of the others who had been without it since about 3:20 p.m.

Company spokesmen planned

See 4,000 Page 10 Col. 4

HARTFORD TIMES - April 13, 1971

# Cable Accident Cuts Off HELCO Power to 4,500

More than 4,500 Hartford Electric Light Co. (HELCO) customers were without power Monday afternoon when a construction firm accidently dug up a power cable while doing excavation work in Bloomfield.

Thomas Brennan, a HELCO spokesman, said the outage affected Windsor, Simsbury, Granby, East Granby and the northern part of Bloomfield.

Brennan said the accident caused a control cable at the north Bloomfield transformer substation to shut down all power at 13:49 p.m.

The HELCO official said when there is a fault anywhere on the line the entire unit shuts off to protect the system.

Another HELCO official said all areas affected had power restored by 2:30 p.m. and that in some areas the power was back on within 30 minutes.

State and local police reported that nothing unusual occurred during the outage.

Some large facilities like Kaman Aircraft switched to auxiliary power until service returned to normal.

HARTFORD COURANT JANUARY 29, 1971

# Power Crisis

## Officials Hopeful For Today

BY DAVE OFFER

A 19-hour electric power shortage for all of New England ended at 8 p.m. Thursday, and power company officials think "things look pretty good" for electrical operations today.

The emergency, declared at 8 a.m. Thursday, resulted in a plea to electric customers to use as little power as possible.

An unusual demand for heat caused by frigid temperatures throughout New England, coupled with breakdowns at several power plants to cause the shortages. Power companies cut back voltage by 5 per cent, and pleaded with large industrial power consumers to cut their operations to avoid power failures.

THURSDAY, JANUARY 28, 1971 Second-Class Postage Paid At Bristol, Conn. TEN CENTS

# State, New England Hit By Electric Emergency

By JOE DOYLE

Local, state and New England power companies have announced there is a regional electric emergency.

Bristol residents today were requested by the local Connecticut Light and Power Co. not to use any appliances or lights that are not "absolutely necessary from now until further notice." Identical requests have been made throughout New England and New York State, as the companies attempt to prevent a possible widespread power failure.

Gov. Thomas J. Meskill, responding to the power emergency he termed "the most serious one that they have had," has ordered all state departments and offices to conserve use of electricity where posisible. He had been called this morning by CL&P President Anthony Wallace to inform him of "a very serious power situation in the state" resulting from the "long period of severe cold."

ments and offices to cut back electrical use, where feasible.

"We don't have a large electrical load within the city system," the mayor said, "but I will contact department heads."

The local office of CL&P issued a request for Bristol-area customers to cut back electrical use. The emergency extends throughout New England and parts of New York.

to continue uninterrupted service to our customers."

A CL&P spokesman today told The Press the request for customers to conserve electrical power, the first such in company history, is an attempt to prevent the possibility of a widescale power failure.

BRISTOL PRESS

HARTFORD COURANT - April 8, 1971

# Power Fails

# Storm Hits,

By HENRY McNULTY

Tuesday night's soggy blanket of snow had almost disappeared by Wednesday night. Bits of snow by the roadside and in shady areas were all that remained of a storm which caused power outages in the state and at least one major traffic tie-up.

Some towns reported up to 16 inches of snow, although a spokesman for the National Weather Service at Bradley International Airport said only 3.2 inches fell there.

Spokesmen from area electric companies said high wind which gusted to 50 miles per hour caused numerous power interruptions. Snow-laden branches fell across power lines in many towns, causing short circuits.

Power was out in Waterbury for up to five hours early Wednesday morning, according to the Connecticut Light & Power Co. Other towns reporting power outages were Rockville, Bolton, Simsbury, Canton, Manchester, West Hartford, Avon, Granby, Tolland, Coventry, Ashford, Columbia and Scotland.

**Police Lines Out**

In Stafford Springs, the state police barracks were without electricity, phones or radio communication for an hour and a half until about 1:30 a.m. Wednesday. "We were lucky that not much happened during that time that needed our attention," a trooper said Wednesday.

In Simsbury, a large tree limb fell on a police car Tuesday night. The car was slightly damaged, police said, and the driver was unhurt.

Minor power failures were also reported in parts of Hart-

HARTFORD COURANT - July 10, 1971 p 17

# Power Line Falls; No Outage

Flashes of blue flame hopped along power lines on Garden and Mather streets Friday night after a line came down at 10:09.

No one reported losing service, according to a Hartford Electric Light Co. spokesman.

Police blocked off streets and appealed to residents to keep off their porches in the event another power line fell. Neither the police nor a spokesman for the Hartford Electric Light Co. was able to ascertain late Friday night the cause of the fallen line.

Power company crews were on the scene about 10:20 p.m., repairing the power lines. Police cars blocked off the street at Mather and Brook streets, Garden and Pliny streets, Garden Street and Albany Avenue, and other locations.

Police said the power line came down on Mather Street between Bedford and Enfield streets.

# Storm Cuts Off Power In State

By THE ASSOCIATED PRESS

Connecticut Light & Power Co. crews continued working through the night in an effort to restore service in Northern Fairfield County, the area hardest hit by power failures during Thursday's snow and high wind.

A CL&P spokesman estimated in excess of 10,000 customers were without power for varying periods of time Thursday.

In Ridgefield, First Selectman J. Mortimer Woodcock opened City Hall, the main fire station and a volunteer fire house to residents without power. Some customers in the area were without power for as long as 14 hours.

Schools in many areas of the western part of Connecticut were to be closed again today.

A CL&P spokesman in Danbury estimated that 4,000-5,000 customers were without power during the height of the storm at mid-afternoon. At midnight the problem was "pretty well buttoned up," the spokesman said, but he added that 28 work crews, or about 100 men, would work through the night.

He said power was expected to be almost completely restored by daybreak.

A CL&P spokesman in Norwalk said there were no significant outages along the shoreline and the lowest perimeter of the power failures appeared to be the Merritt Parkway.

At midnight about 85 per cent of service had been restored in the Norwalk area and power was expected to be almost totally restored by noon or early afternoon.

The National Weather Service at Bradley International Airport in Windsor Locks reported winds at noon Thursday at 46 miles per hour with gusts up to 69 miles per hour.

The Weather Service predicted overnight gusts up to 50 mile per hour and winds 20 to miles per hour and gusty day.

Isolated power failures high winds Thursday were ported in West Hartford, Hartford, Bloomfield, Simsbury, New Canaan, East Lyme, North Stonington, Ledyard and many other communities.

Residents in Bethany were without power for about 50 minutes during the afternoon. Some 1,343 customers of United Illuminating Co. in Trumbull were without electricity for an hour Thursday morning, and 347 customers in Easton had the same problem.

The Hartford Courant

*Established 1764—The Oldest Newspaper of Continuous Publication in America*

Published at 285 Broad Street, Hartford, Connecticut, 06101 — Tuesday, March 2, 1971

# The Power Crisis

23a

Elsewhere in The Courant this morning is the third and concluding article in a series by Miss Jackie Ross on the electrical power crisis that New England faces, along with much of the rest of the country. The gist of her thesis is that the demand for electrical power, nationwide, regionwide and statewide, is approximately doubling every decade. But new generating capacity is not increasing at anything like the rate of the projected increased demand.

Where a decade or so ago, the Federal Power Commission set a comfortable rule of thumb that electric power systems should maintain excess generating capacity of 20 per cent above peak load, the situation in most industrial areas has deteriorated to a point where the failure of a single major generating plant can force voltage reductions and service curtailments over an entire region.

due to the restrictions on the importation of foreign oil in the East. Federal policies that restrict the search for new reserves of natural gas are blamed for the fact that supplies of that fuel are lagging.

But the most obvious problem of the power crisis is the failure of the electric industry to match the projected demand for more generating capacity. As Miss Ross points out, it springs in large part from the resistance of the public through its various agencies to what have hitherto been taken as unavoidable byproducts of power production, including air and water pollution, disfigurement of the landscape, loss of natural resources and possible radiation. Some of that resistance may be emotionally overblown but it is undeniably effective and it is primarily responsible for the lag in generating capacity here and elsewhere.

**Glastonbury**

# Winds Disrupt Power, 150 Homes Affected

High winds in a storm early Thursday morning caused electrical power failures affecting about 150 Glastonbury families.

A Connecticut Light and Power Co. spokesman said winds apparently caused wires to touch, cutting off power for 47 families on Candlelight Drive and an undetermined number of the 109 families living in a housing complex on Nanel Drive. He said both failures occurred shortly after 4 a.m. and continued until about 6:30 a.m., when power began to come back.

now available at the Town Office Building are for the western half of the town, not the eastern half, as reported in Thursday's Courant.

**Post Office Hours**

The Glastonbury Post Office announced window service will be available from 8 a.m. to 5 p.m. Monday through Saturday through next Thursday. There will be no window service on Sunday.

—

See our ad in today's classified under "An opportunity to learn." No. 33.—Advt.

—

Bristol Press

CONNECTICUT, 06010, FRIDAY, MARCH 5, 1971

25a

**Result Of Storm**

# Downstate Hit Hard By Power Outages

By The Associated Press

Connecticut Light & Power Co. crews continued working through the night in an effort to restore service in Northern Fairfield County, the area hardest hit by power failures during Thursday's snow and high wind.

A CL&P spokesman estimated in excess of 10,000 customers were without power for varying periods of time Thursday.

BRISTOL PRESS

BRISTOL, CONNECTICUT, 06010, MONDAY, FEBRUARY 1, 1971

## *Power Failure*

Some 300 homes in the eastern section of Bristol and 50 more in the Camp St. area of Plainville were without power for nearly two hours this morning.

Service was interrupted at 5:45 a.m. in 22 degrees below zero weather when, according to CL&P officials, "a feeder line leading to the Brook Street sub-station snapped."

Bristol CL&P Manager Samuel J. Burke reported that most affected customers had service restored by 7:20 a.m., the rest a short time later.

The power outage was attributed to the cold weather.

HARTFORD COURANT FEBRUARY 28, 1971

# The Power Gap

# Voltage Reductions

(This is the first of three articles dealing with the growing problem of supplying electricity to New England).

By JACKIE ROSS

New England is facing an electrical power crisis.

Black-outs, voluntary power reductions and voltage cutbacks of the last six months dramatize a problem that has been growing more and more serious in the last two years.

Power company spokesmen, state officials and technologists working on the power situation in Connecticut warn that power failures will increase.

This means the average New England consumer — who already pays about 30 per cent more for 24 per cent less power than most everyone else in the country, according to the New England Regional Commission — will continue having problems.

He will still have five per cent voltage reductions that slow his toaster in the morning and narrow his television picture slightly. He will also pay more to walk in dark corridors at the office and shave manually to conserve electricity during emergency periods of extreme heat or cold.

It may ultimately mean electricity will become intolerably unreliable and expensive for the average consumer, according to a state official who has worked on the power situation for months.

According to a report by the Electric Coordinating Council, the problem of power shortage started in the late 1960s when power companies began falling slightly behind in their construction deadlines.

Spokesmen from the four largest power companies in Connecticut blame these delays on strikes, slow delivery of equipment, technical difficulties and a labyrinth of government regulatory delays.

Also, they said, the larger generating units now being put into service to save money and equipment are having longer trial periods than the older, smaller units used to have. During the new year-to-two-year trial, the big plants are not considered reliable. When one of these plants goes out of service unexpectedly, no less than 400,000 kilowatts of power becomes unavailable. Smaller generating plants kept on stand by for such emergencies are either out for scheduled repairs at

THURSDAY, MARCH 4, 1971 Second Class Postage Paid At Bristol, Conn. TEN CENTS

# Snow, Winds Hit City; Roads, Power Affected

28a

By DON GORDON

An intensifying late winter storm, coupled with increased winds and a five degree temperature drop was keeping Police, Public Works Department and utility company crews extremely busy late this morning.

Several sections of the city were without electrical service due to falling trees and large limbs. There were several accidents, numerous traffic tieups and road conditions were very hazardous.

The storm began as snow Wednesday at 10 a.m., changed to sleet late in the afternoon, rain early this morning and then heavy snow with blizzard conditions shortly after 9 a.m. today.

Public Work crews, who worked through the night with 45 hired snowplows, had highway conditions reduced to wet slush but the heavy snow and temperature plunge caused a complete reversal.

Strong wind gusts toppled trees in at least three locations at about 11:30 this morning. Police were detailed to Stafford Avenue and Stevens Street, Lincoln Avenue and on King Street near Page Park.

The most serious incident occurred at Stafford and Stevens where a large tree fell onto a moving auto, demolishing the vehicle, blocking the road and severing electrical service in the immediate vicinity.

BRISTOL PRESS

HARTFORD COURANT SEPT 25, 1970

# Utilities Ration Power Again

By ASSOCIATED PRESS

Air conditioners were turned off and lights were dimmed Thursday as utilities along the Eastern seaboard again ordered power reductions or "brownouts" to cope with an electricity shortage. There were signs of improvement, however, as hot, humid weather eased a little in some areas and repaired equipment was put back in service.

It was the third day of the current power crisis which began Tuesday, the last day of summer, when the shortage was so severe some utilities were forced to resort to blacking out selected communities for brief periods to prevent a major failure. The unexpected hot weather, generator failures and loss of power from equipment undergoing seasonal repairs combined to cause the trouble.

Utilities in New York, New Jersey, Pennsylvania, Maryland, Washington, D.C., and Virginia broadcast appeals Thursday asking customers, particularly large industrial users, to cut back on the use of nonessential electricity.

There were some encouraging signs. The Pennsylvania Electric Co.'s Keystone generator at Johnstown, Pa., a 836,000 kilowatt facility that failed Tuesday —was put back in service Thursday afternoon.

In New York City, early afternoon temperatures were in the low 80's, about 10 degrees below the Tuesday and Wednesday readings.

Consolidated Edison Co.,

See POWER Page 2, Col. 3

BRISTOL PRESS - Feb 8, 1971 front page

# Big Blackout In Manhattan

NEW YORK (AP) — A transformer failure in a Consolidated Edison Co. power plant plunged blocks of midtown Manhattan into darkness for more than four hours Sunday night. Nine television stations were knocked off the air.

The blackout stranded sightseers in the 86th and 102nd floor observatories of the Empire State Building, snarled traffic moving without signals and turned thousands of Sunday suppers into candlelit dinners.

First reports from Con Edison said the failure resulted from an explosion, but a spokesman said later that the trouble probably was due to two electrical short circuits "that sounded like explosions."

At its height, the blackout covered the area bounded roughly by the East River and Broadway between 30th and 51st streets. Of four distribution grids affected, two were restored by 10 p.m. and the others at 11:42 p.m.

When lights flickered and went out at 7:12 p.m., many recalled the "Great Northeast Blackout" of 1965 and feared it was happening again. But the trouble this time was localized.

Because of the grid patterns, half of Times Square went black while lights on the other half blazed on brightly.

The first two grids to go knocked out power to the Empire State Building where all but one of the local television stations have their transmitters.

WXTV, a Spanish language station on Channel 41, has its transmitter downtown. It stayed on the air and broadcast bulletins about the blackout in English.

Radio stations also stayed on the air, some using emergency power.

HARTFORD COURANT March 5, 1971

## Gusts Up To 69 M.P.H.

# Snow Lashes

By KENNETH BOOKER

Gusts up to 69 miles per hour whipped a wet snow across Connecticut Thursday, stalling ground and air travel, closing some schools, cancelling meetings, and creating power failure in at least 27 towns.

The weatherman, who Thursday changed heavy snow warnings to high wind warnings, expects today to remain cold and windy, with cloudy skies, and only a last few flurries of snow possible. Skies should clear tonight, and fair and milder skies will prevail Saturday, according to the National Weather Service at Bradley International Airport.

**Drivers Warned**

Thursday was nobody's perfect day, but the weatherman said it was about right for an early March storm. For instance, he said, the 5.3 inches of snow that began to fall Wednesday and continued until Thursday night were the equivalent of 1.5 inches of rain. An inch of rain is normally considered to be the equivalent of 10 inches of snow.

State police were warning drivers to stay home unless travel was necessary all day Thursday. But although there were accidents on large and small roads all over the state, no serious injuries were reported by late Thursday night.

Just about everything that happens during a heavy winter storm happened Thursday, although the snow was neither as heavy nor as fast-falling as most storms, and the accumulation was modest for Connecticut. But the thick and slushy snow closed Bradley International Airport, caused multiple car collisions on state highways, and brought tree limbs over powerlines in many scattered communities.

By mid-evening the state police at the Hartford Barracks had investigated 31 accidents on state highways that involved 20 trucks and 28 cars. The largest occurred on Interstate Rt. 91 in Windsor, and involved eight cars and four trucks.

**Zero Visibility**

Both state and local police who were kept busy attending the minor accidents all day said they were most often caused by the winds which blew the snow over the highways, reducing visibility to almost zero in some places. State police said many of the accidents which first involved only one or two cars became obstacles which subsequent traffic often failed to avoid.

Bradley International Airport closed about 10:45 a.m. after an Allegheny Airlines DC-9 jet skided off the last open run-

BRISTOL PRESS FEBRUARY 4, 1971

## Uncertain Future

# *Electricity Cutbacks*

WASHINGTON (AP) — The acute shortage of electricity plaguing parts of the Northern United States could be but a bleak portent of things to come, a Federal Power Commission official says.

Since mid-January, 19 voltage cutbacks have been ordered in areas from Chicago to New England. "I've neaver seen cutbacks like we're seeing now," Commissioner John A. Carver Jr. said in an interview. "Whatever else it might mean at the present time, it means we're going to have to live with this for the foreseeable future unless the good Lord sees fit to change the weather, and I don't think that will happen."

In the last three weeks, according to FPC data, voltage cutbacks of up to 5 per cent have been necessary eight times in the power pool serving New England, seven times in the New York State power pool three times in thePJM pool serving Pennsylvania, New Jersey, Delaware, Maryland, Virginia and the District of Columbia and once in Chicago and other areas of northern Illinois served by the Commonwealth Edison Co.

The utility firms serve upwards of 50 million people, but few felt any pinch beyond the inconvenience of voluntary compliance with pleas to use as little power as possible. There is

Torrington Register, Tuesday, November 17, 1970-

# Power failure affects towns for two hours

WINSTED — A power failure, caused by a rainstorm, affected eight towns in this area for two hours Sunday morning.

According to a report from the power company, a guy wire was broken due to the storm, allowing transformers on two adjacent utility poles to come into contact. This caused a 27,000 volt short circuit, which resulted in the blackout.

Towns affected were Winsted, Colebrook, West Hartland, Winchester Center, Barkhamsted, Harwinton, Litchfield and parts of Torrington. The power failure lasted from 4:47 to 7:22 a.m.

Winsted Memorial Hospital switched to auxiliary power.

BRISTOL PRESS - Septemer 24, 1970

## 3rd Day In A Row

# *Power Cut Back*

By The Associated Press

Hot and humid weather forced power cutbacks in the Middle Atlantic states for the third successive day today, and more appeals were made for voluntary restrictions on the use of electricity.

With weather forecasters predicting 90-degree heat in New York city—withdrawing their earlier prediction that the heat wave would be eased slightly—Consolidated Edison Co. put a 5 per cent voltage reduction into effect at 9:30 a.m.

New Jersey's four major utilities took similar action this morning despite restoration of service at two large generators whose breakdowns contributed to the crisis. The Philadelphia Electric Co., also reduced power by 5 per cent.

The Potomac Electric Power Co. issued what it called an "urgent message" to its customers in Washington, D. C., and parts of Virginia and Maryland, then reduced voltage by 6 per cent.

Saying that "an emergency exists again today," Potomac urged all customers to curtail use of electricity wherever possible.

Some hope was expressed by an official of New Jersey's Public Service Electric and Gas Co., who said that repair of the general cooperation of customers, and cooler weather in the Midwest that would permit the Eastern states to purchase power elsewhere, might help the utilities to avoid the complete shutdowns of power to certain areas that were necessary on Tuesday.

BRISTOL PRESS- December 9th, 1970

# Power Failure Darkens 1,400 Homes In City

At 4:20 p.m. Tuesday a section of Bristol stretching from Wolcott Road to Middle Street and south of South Street experienced a blackout.

Connecticut Light and Power Co. spokesman John Adams told The Press this morning that the cause of the blackout, which affected 1,400 homes, was the failure of a 5,000-volt express feeder circuit running from the power station on Riverside Avenue down Main Street and then to South Street. The feeder failed at a point in front of the Southern New England Telephone Co. building.

The feeder does not provide service to any homes until it reaches South Street. When it failed before that point, all the homes relying on it for power were affected.

Adams said that one-third power was restored by 5:05 p.m., two-thirds by 5:25 p.m., and full power by 6:40 p.m. through the use of alternate feeds. The express line itself, in service for 20 years, was restored by 6 this morning.

A REPORT ON TROPICAL STORM DORA BY CL&P -LAKEVILLE JOURNAL 9/2/71

Although Tropical Storm Doria, which hit Connecticut early Saturday morning, wasn't big enough to get into weather record books, the effect on CL&P's customers was more devastating than any storm thrown at us before.

For instance, it overshadowed the notorious Diane of 1955, and Donna of 1960, which affected 73,000 of our customers. Doria more than doubled that figure with 150,000 customers out of service. Doria affected one out of every three of our residential electric customers.

36a

## WHAT MADE DORIA SO SPECIAL?

No part of Connecticut escaped the soaking rains and high winds. That means every one of our 12,000 miles of distribution lines was exposed to damage. Everywhere limbs and full grown trees fell, severing lines and snapping utility poles like matchsticks. How many breaks and other types of damage resulted from the storm are not known, but everything had to be repaired before power could be restored. For instance, crews replaced 15,000 high voltage fuses, which gives you some idea of the enormous task involved in restoring your service.

# Winsted

## Power Failure Blanks Region for 48 Minutes

WINSTED — A power failure which lasted more than 40 minutes here Saturday affected parts of Harwinton, Barkhamsted, Colebrook and Torrington.

A transformer failure at the Connecticut Light and Power Co.'s Campville sub-station just east of Litchfield was blamed.

Power was cut about 8:35 a.m. and was restored 45 minutes later.

A spokesman for CL&P in Waterbury said the transformer failure was a "very unlikely thing to happen" but once the difficulty was traced, a backup transformer was placed in service at the site.

# Power Cuts Necessary To Avoid Blackouts

By ASSOCIATED PRESS

What happens when a power company cuts voltage during a heat wave to avoid a major breakdown?

You might say a power company is similar to a water company. One delivers a flow of water, the other, electricity.

There are limits to the amount of water or electricity any one system can supply.

When that limit is reached in a water company, the system automatically regulates itself and users get a reduced flow in their faucets and other outlets —This is what happens, for instance, when everyone in the neighborhood turns on his water sprinkler at the same time. You don't sprinkle as much water. In other words, the pressure is low.

But an electric power system is not self-regulating, like the water system. Someone has to watch the rising demand, such as comes in a heat wave when air conditioners are turned on full blast.

If all the generators supplying a system's electric power are working at capacity and still more power is demanded, an overload causes the generators to cut out or even burn out. Something like this happened in the November 1965 power blackout in the northeastern United States.

If power company engineers cannot get more power from outside sources, they must cut down the demand.

One way of doing this is "load shedding," which is simply cutting off the power to selected areas, much like turning off a master faucet.

Or the engineers can reduce the intensity of the electrical current, lower the pressure, so to speak, like in the water system.

They do this by cutting the voltage, the pressure pushing electric current to you, which is applied at the generator.

This means that users all continue getting power, but at reduced strength. It's like the faucets' running slower. Everybody gets some water but not as much as usual.



COPY BOUND

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

April 17, 1972

anley V. Tucker
3 Capitol Avenue
rd, Conn.

RE: STANLEY TUCKER v. MAHER, ET AL.,
No. 70-249.

ir:

The Court today entered the following order in ove-entitled case:

The petition for a writ of certiorari is granted. e judgment is vacated and the case is remanded to e United States Court of Appeals for the Second rcuit for further consideration in light of Lynch Household Finance Corp., 405 U.S. ____(1972).

Very truly yours,

Michael Rodak, Jr., Clerk
By E. F. Fydlow
Assistant Clerk

c opin. in Lynch v. ousehold Finance Corp.

an R. Miller, Esq.
St.
Conn. 06103

-P 1-

ND CLOSE IN CENTER

To the Sheriff of the County of Hartford, his Deputy, or to either of the Constables of the Town of Harford, within said County, *Greeting*:

By Authority Of The State Of Connecticut, You are hereby commanded to attach to the value of Thirty Thousand Dollars ($30,000.) the goods or estate of

Stanley V. Tucker,
of 914 West Boulevard
in said Town of Hartford,

and him summon to appear before the Superior Court to be held at Hartford, within and for the County of Hartford, on the first Tuesday of November, 1968 at ten o'clock in the forenoon, then and there to answer unto

Elizabeth Ann Bitonti
of said Hartford,

in a civil action wherein the plaintiff complains and says:

1. At all times mentioned herein, the defendant was, and continues to be, the owner of a tenement house, consisting of three or more tenements, known as Whitney Arms, and located at No. 38 South Whitney Street, in the City of Hartford, County of Hartford and State of Connecticut.

2. At all times mentioned herein, the defendant possessed, maintained and controlled the front entranceway, halls and stairways situated within the aforesaid tenement house, and was responsible for their proper care and maintenance.

3. On June 30, 1968, at approximately 9:30 in the evening, the plaintiff was lawfully on the premises of the defendant, as the social guest of a tenant of the defendant's who leased and occupied an apartment on the basement level of the said tenement house. As the plaintiff entered the said tenement house by way of the main entrance and [illegible]



POOR

the public stairway leading to basement apartment aforesaid, she was caused to trip and lose her footing by reason of dangerous and defective conditions existing on the premises, as more particularly set forth hereinafter, and she thereupon fell forward and down the said flight of stairs, struck her head and face on a bed spring which had been negligently placed and maintained by the defendant at the foot of said stairs, and she thereby sustained the severe and painful bodily injuries hereinafter set forth.

4. The plaintiff's fall and her resulting injuries and damages were caused by the carelessness, negligence and unlawfulness of the defendant in one or more of the following ways:

(a) In that he maintained the stairway in a dangerous and defective condition in that the carpeting on the stairway was improperly fastened to said stairway and raised above the level of the foyer, so that said carpeting and its metal fastener constituted a tripping hazard to persons, such as the plaintiff, attempting to descend said stairs;

(b) In that he failed to properly illuminate the front foyer and stairway leading to the aforesaid basement apartment and violated §19-344 and §19-346 of the Connecticut General Statutes;

(c) In that he maintained a bed spring at the bottom of the aforesaid stairway, which constituted a dangerous and hazardous obstruction and condition;

(d) In that he failed to repair or remedy the aforesaid dangerous or defective conditions, or to warn the plaintiff of the same;

(e) In that he failed to take any measures to make the premises safe for the plaintiff, an invitee thereon, as aforesaid.

5. As a result of said fall, caused by the carelessness, negligence and unlawfulness of the defendant, as aforesaid, the



OOR COPY

plaintiff sustained the severe and painful bodily injuries hereinafter set forth, some or all of which, or the effects of which, may be permanent in nature, to wit: a severe shock to her entire nervous system, contusion to the right ear and face, fracture of the left angle of the mandible. Following said accident, the plaintiff was taken to the Saint Francis Hospital, where she underwent a closed reduction of the fracture and was confined for several days thereafter. She will in the future require further surgery for the removal of the wires which were placed in her jaw to repair said fracture.

6. As a further result of the carelessness, negligence and unlawfulness of the defendant as hereinabove set forth, the plaintiff has incurred and will in the future incur expenses for hospital and medical care and treatment, surgery, x-rays, pharmaceuticals, etc., all to her great loss.

7. As a further result of the carelessness, negligence and unlawfulness of the defendant, the plaintiff has sustained a severe and permanent impairment of her earning capacity, and has been and will be incapacitated from carrying on her usual daily activities and duties, to her great financial loss.

The plaintiff claims Thirty thousand dollars ($30,000.) damages.

Donald J. Cantor, of Hartford, is hereby recognized in the sufficient sum of $75.00 to prosecute, etc.

Hereof fail not, but of this writ, with your doings hereon endorsed, make due service and return according to law.

Dated at Hartford this 16th day of October, 1968.

HAROLD A. BOCHINO,
Commissioner of the Superior Court.

*Defendant's Motion For More Specific Statement*

Pursuant to Practice Book Section 99 the defendant, Stanley V. Tucker, hereby moves that the plaintiff be required to amend her complaint and make it more specific in the following respects:

1. State precisely upon which paragraph 4a, or 4b, or 4c, or 4d, or 4e the plaintiff is basing her action, if any
2. Plaintiff has set forth in paragraph (4) of her complaint a total of five possible causes of a fall without specifying which, if any, is the cause of the injury complained of
3. Defendant is entitled to know what acts of negligence if any, plaintiff is relying on.

105 C 689
By STANLEY V. TUCKER,
Defendant.

Filed February 7, 1967.

*Order*

After hearing had it is hereby ordered denied without prejudice.

By the Court,
THOMAS H. ABRAHAM,
Assistant Clerk.

February 21, 1969.

---

*Answer*

1. The defendant admits the first paragraph and denies the second, third, fourth, fifth, sixth, and seventh paragraphs of plaintiff's complaint and leaves the plaintiff to her proof.

By way of special defenses defendant alleges that:

First Special Defense

1. That plaintiff was careless and negligent and failed to make use of her senses and any fall or injuries were due to plaintiff's own fault and neglect.

Second Special Defense

2. That plaintiff had been drinking alcoholic beverages both at the Hour Glass on Park Street in Hartford and at 398 Park Road, West Hartford the night of the alleged fall and any fall or injuries, if any, were sustained as the direct cause of intoxication and alcoholism.

Third Special Defense

3. That plaintiff had been quarrelling and exchanging blows with a boy friend just prior to the alleged fall and as a result lost control of her emotions, nerves, and senses and therefore said fall and injuries, if any, were the result of quarrelling and fighting.

Fourth Special Defense

4. That plaintiff was a trespasser living in concealment from defendant in Apt No 2, 38 S. Whitney Street to avoid payment of rent to defendant and therefore there would be no liability to defendant for alleged fall and injuries, if any.

Fifth Special Defenses

5. That plaintiff prior to entry of premises at 38 S. W. Whitney Street at the time of the alleged fall saw that the hallway was dark and voluntarily assumed the known risk of darkness when she entered the premises.

Sixth Special Defense

6. That plaintiff had entered the premises at 38 S. Whitney Street daily prior to the alleged fall as she lived therein in concealment from defendant as a trespasser and therefore was familiar with the conditions and could and should have conducted herself in a safe manner.

Seventh Special Defense

7. That plaintiff owed a duty to warn the landlord and other tenants of the alleged darkness and alleged hazards in Hallways but plaintiff neglected and failed to issue any warning at all.

Eighth Special Defense

8. That plaintiff daily observed the bed springs in the lower hallway and failed and neglected to issue any warning to landlord, rent collector or to tenants.

Ninth Special Defense

9. That the bed springs in the lower hallway had been put there by direction of plaintiff without knowledge or approval of landlord to suit the convenience of plaintiff as trespasser and therefore any fall and injuries, if any, were the direct result of doings of plaintiff.

Tenth Special Defense

10. That plaintiff had previously stolen the sum of $160 in rent money from the tenant at Apt No 2 38 S. Whitney St. for beer money and on the night of the alleged fall was on a mission of burglary for more beer money and therefore there was no liability accruing to defendant.

By Way of Counter-Claim:

All of the foregoing statements in this answer are made part of this counter-claim.

First Counter-claim

1. At the commencement of this action plaintiff deliberately wilfully and maliciously caused an excessive attachment to be levied upon defendants property, said attachment being for $30,000 whereas a more reasonable attachment would have been about $3,000 as shown by the attached Exhibit "A", defendant claims damages of $30,000.

Second Counter-claim

2. At the commencement of this action plaintiff deliberately, willfully and maliciously caused an attachment of $30,000 to be levied upon property of defendant under the attachment laws of the State of Connecticut since held unconstitutional and void by the United States Supreme Court and defendant claims damages of $30,000.

Third Counter-Claim

3. At the time of commencement of this action plaintiff was and is indebted to defendant for the sum of $400 in unpaid rent and damages.

The defendant offers to set off said debts and claims against plaintiff's demand, if any should be found to exist and claims judgment for such balance as may be found to be due from plaintiff.

By STANLEY V. TUCKER,
Defendant.

Filed June 27, 1969.

## EXHIBIT A

Levin, Hultgren & Cantor
Attorneys-at-Law

May 2, 1969

Mr. Stanley V. Tucker
130 Newton Street
Hartford, Connecticut 06101

Re: Elizabeth A. Bitonti
vs. Stanley V. Tucker

Dear Mr. Tucker:

In accordance with our recent agreement to settle the above-captioned case for the sum of $3,250.00, I have prepared a release of all claims which has been duly executed by Mrs. Bitonti, as well as a release of attachment concerning your property at 38 South Whitney Street, Hartford, Connecticut. These documents will be held for you in this office until you are able to pay to us the amount agreed upon. Kindly call me as soon as you have raised these funds so that we can get together for the final disposition of this case.

Very truly yours,
HAROLD A. BOCHINO

HAB/amt

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*Motion To Expunge*

The plaintiff in the above-entitled action moves the Court to expunge the Second, Third, Fourth, Sixth, Seventh, Eighth, Ninth and Tenth Special Defenses of the defendant for the reasons that said "Defenses" contain unnecessary repetition, scandal, impertinence, obscurity, irrelevant, immaterial and evidential matters, and said defenses are sham and frivolous

and unfit by reason of their indecent and scandalous allegations to become a part of the record.

The plaintiff further moves the Court to expunge the First, Second and Third Counter-Claims for the reason that they were not properly filed.

Plaintiff,
By LEVIN, HULTGREN & CANTOR,
Her Attorneys.

Filed July 8, 1969.

*Order*

The foregoing motion having been presented it is Ordered: Granted, and the Special Defenses, and the Counterclaims are ordered expunged.

By The Court,
FRANCES DILLON,
Assistant Clerk.

July 25, 1969.

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*Motion For Discharge Of Excessive And Illegal Attachment*

The defendant in the above-entitled action respectfully represents:

1. The plaintiff in said action now pending in this court by Writ dated 16 October 1968 and returnable to this court the first Tuesday of November 1968 caused an attachment to be placed on the property described in Exhibit "A" attached hereto as appears from the officer's return, said property been appraised by the Tax Appraiser of the City of Hartford for tax purposes at approximately $55,000.

2. The amount of damages claimed by plaintiff in said

action is $30,000 and said claim and attachment are excessive as plaintiff by letter offered (see Exhibit "B") to settle for the sum of $3,250.00.

3. Said attachment is void and illegal by reason that said attachment was levied without notice or hearing and violated defendants rights to Due Process as defined by the U. S. Constitution Amendment XIV (See *Snaidach* v. *Family Finance Co.* 395 U. S. 337)

The defendant moves:

1. That plaintiff be directed to appear in court and state on oath the precise nature and amount of her claim and give circumstantial statement thereof.

2. An order releasing the property attached so as not to impair the financial situation of defendant as to normal business needs for refinancing and sale in normal course of business.

By STANLEY V. TUCKER,
Defendant.

Filed January 2, 1970.

*Order*

The above motion having been presented to the Court, it is hereby ordered denied.

By the Court,
PAUL LEVINE,
Assistant Clerk.

January 9, 1970

## EXHIBIT "A" TO DEFENDANT'S MOTION FOR DISCHARGE OF EXCESSIVE AND ILLEGAL ATTACHMENT

Description of real property attached by Plaintiff:

KNOWN AS 38 SOUTH WHITNEY STREET, and bounded and described as follows:

North by land now or formerly of Domenick E. Peliotiori et al 100 feet;

East by land now or formerly of Deolinda F. Noiva, et al, 50 feet;

South by land now or formerly of Julio Santos, et al, 100 feet; West by South Whitney Street, 50 feet;

And being the same premises conveyed to Stanley V. Tucker by Warranty Deed of Marcel Gandreau, et al.

## EXHIBIT "B"

Levin, Hultgren & Cantor
Attorneys-at-Law

May 2, 1969

Mr. Stanley V. Tucker
130 Newton Street
Hartford, Connecticut 06101

Re: Elizabeth A. Bitonti
vs. Stanley V. Tucker

Dear Mr. Tucker:

In accordance with our recent agreement to settle the above-captioned case for the sum of $3,250.00, I have prepared a release of all claims which has been duly executed by Mrs. Bi-

tonti, as well as a release of attachment concerning your property at 38 South Whitney Street, Hartford, Connecticut. These documents will be held for you in this office until you are able to pay to us the amount agreed upon. Kindly call me as soon as you have raised these funds so that we can get together for the final disposition of this case.

Very truly yours,
HAROLD A. BOCHINO

HAB/amt

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*Amendment To Complaint*

The plaintiff in the above entitled action hereby amends her complaint on file by amending paragraphs five and six to read as follows:

5. As a result of the fall caused by the carelessness, negligence and unlawfulness of the defendant as aforesaid, the plaintiff sustained the severe and painful bodily injuries hereinafter set forth, some or all of which, or the effects of which, may be permanent in nature, to wit: a severe shock to her entire nervous system, contusion to the right ear and face, fracture of the left angle of the mandible, the permanent loss of three lower teeth, two of which were fractured and broken in the aforesaid fall, necessitating the extraction of said teeth; irreparable damage to an upper partial plate which had to be replaced. The lower teeth which were extracted were replaced by a lower partial plate, the use of which has resulted in damage to and decay of her remaining teeth. Following said accident, the plaintiff was taken to the St. Francis Hospital, where she underwent a closed reduction of the fractured mandible, and was confined for several days thereafter. The fractured mandible has resulted in a permanent impairment of the plaintiff's jaw.

6. As a further result of the carelessness, negligence and unlawfulness of the defendant as hereinabove set forth, the

plaintiff has incurred and will in the future incur expenses for hospital and medical care and treatment, surgery, dental care and treatment, x-rays, pharmaceuticals, etc., all to her great loss.

Plaintiff,
By LEVIN, HULTGREN
& CANTOR,
her attorneys.

Filed February 2, 1970.

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*Amended Answer To Plaintiff's Amended Complaint*

Pursuant to Section 76 of the Practice Book defendant hereby files his amended answer to plaintiff's Amended Complaint.

1. Defendant admits the first paragraph and denies the second, third, fourth, fifth, sixth, and seventh paragraphs of plaintiff's complaint and leaves plaintiff to her proof.

First Special Defense

1. That plaintiff was careless and negligent and failed to make use of her senses and any fall or injuries were due to plaintiff's own fault and neglect.

Second Special Defense

2. That plaintiff had adequate warning of the darkness, if any, prior to entry of the premises and was contributorily negligent in failing to make use of said warning.

Third Special Defense

3. That plaintiff was residing as a trespasser on the premises where the injuries allegedly took place and defendant as landlord owed no duties to plaintiff of any kind.

Fourth Special Defense

4. That the bed springs allegedly in the hallway where the plaintiff claims injury were placed there by the plaintiff or by plaintiff's request without knowledge or consent from defendant and any injuries resulting were the direct result of plaintiff's own acts and doings.

Fifth Special Defense

5. That plaintiff prior to entry of premises at 38 S. Whitney St. at the time of the alleged fall saw that the hallway was dark and voluntarily assumed the known risk of the darkness when she entered the premises.

Sixth Special Defense

6. That plaintiff had been drinking alcoholic beverages, and exchanging blows with a boy friend just prior to the alleged injuries and therefore lost control of her emotions, nerves, and senses and therefore caused the fall and injuries, if any, by her own misbehavior.

Seventh Special Defense

7. That the matters complained of by plaintiff in Para (3), (4), (5), (6) and (7) of her complaint as amended are barred by the statute of limitations General Statute 52-584 by the three year limitation from the date of the act or ommission complained of.

Eighth Special Defense

8. That the matters complained of by plaintiff in Para (5) and (6) of her complaint as amended are barred by the statute

of limitations General Statute 52-584 by the one year limitation from the date of injury.

By STANLEY V. TUCKER,
Defendant.

Filed February 13, 1970.

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*Reply*

The plaintiff denies each and every material allegation contained in the special defenses. The plaintiff hereby reserves her objections to the legal sufficiency of the Second, Third, Fourth and Sixth Special Defenses, as set forth in the plaintiff's motions to expunge dated July 7, 1969, and September 12, 1969, and the orders entered by the Court on July 25, 1969, and January 9, 1970. The plaintiff makes no reply to the first or second counterclaims or to the set-off for the reason that the same were expunged by the Court on July 25, 1969, and again on January 9, 1970.

Plaintiff,
By LEVIN, HULTGREN
& CANTOR,
Her Attorneys.

Filed January 16, 1970.

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*Memorandum of Decision*

The testimony of Mr. Tucker and the disinterested witnesses established that the plaintiff's fall was due to a failure to "provide for the lighting of all public halls at night." Gen. Stat. § 19-346; see *Cricca v. Bosak*, 153 Conn. 89, 92. Further, even if the statute is disregarded, the premises were not reasonably safe at the time of the plaintiff's fall, because of the interaction of two conditions: the elevation of the mold-

ing at the top of the stairway and the absence of any effective artificial lighting. The likelihood of serious injury in the event of a fall was increased by the bed-spring at the bottom of the stairs.

The defendant has the burden of proof on the issue of contributory negligence and has not sustained that burden. See *L'Heureux* v. *Hurley*, 117 Conn. 348, 359, *Burk* v. *Corrado*, 116 Conn. 511, 514. Nor has the defendant sustained his burden of proof on the other special defense that was argued, i.e. the status of the plaintiff. In regard to that, the defendant expressly disavowed any claim that a tenant could not have a guest, and there was no evidence that the plaintiff was not an invitee of Mrs. Russak (Brewer).

As a result of the fall, the plaintiff sustained serious injuries, including a fracture of the mandible. She was compelled to undergo painful surgical procedures that involved drilling into the roof of her mouth and immobilizing her jaw. A tooth at the site of the fracture had to be extracted. This was a "strategic" tooth, since it served as an excellent anchor for a partial lower-plate. As a result of the loss of this tooth, her partial lower-plate has to be anchored to other lower teeth in such a way that considerable torque is applied to the anchoring teeth by the eating process, and these teeth will be subjected to an abnormal rate of deterioration. As a further result of the fracture, her temporal mandibular joint does not function normally, and she does not have a full range of motion of her lower jaw. This limits the opening-range of her mouth for talking, eating or yawning. The temporal mandibular joint now also produces crepitus, or "clicking". Her ability to eat foods that require biting or chewing strength, such as apples and steak, is impaired. These conditions are likely to be permanent. At the time of her injury, her life expectancy was 51 years.

The plaintiff's special damages total fifteen hundred and twenty-seven dollars ($1527), including three hundred thirty-four dollars and twenty-three cents ($334.23) of her hospital

bill, representing a partial payment of that bill by the state under a state welfare program. This is included as an item of special damage because, apart from any other considerations, the state has a preferred claim against the plaintiff for that payment under the provisions of 1969 P.A. No. 730, § 28. See also, 1969 P. A. No. 730, §31 (statute of limitations does not apply to state's claim; attorney general shall collect claim).

The plaintiff is entitled to reimbursement for her special damages and to reasonable compensation for her pain and suffering and permanent injuries. The court finds that ten thousand dollars ($10,000) is a reasonable amount for such reimbursement and compensation, and, accordingly, judgment may enter for the plaintiff to recover of the defendant damages in the amount of ten thousand dollars ($10,000).

RUBINOW, J.

Filed August 7, 1970.

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STATE OF CONNECTICUT

No. 158000

ELIZABETH ANN BITONTI of Hartford, vs. STANLEY V. TUCKER of Hartford. } Superior Court, County of Hartford, At Hartford August 7, 1970.

Present HON. JAY E. RUBINOW, Judge

*Judgment*

This action, by writ and complaint dated October 16, 1968, claiming $30,000.00 damages, came to this Court on the first Tuesday of November, 1968, and thence to the present time, when the parties appeared and were at issue to the Court, as on file.

The Court, having heard the parties, finds the issues for the plaintiff.

Whereupon it is adjudged that the plaintiff recover of the defendant $10,000.00 damages and her costs, taxed at $516.20.

By the Court,
DOMINIC A. DICORLETO,
Clerk.

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*Defendant's Appeal*

In the above entitled action the defendant appeals to the Supreme Court of Errors from the Judgment rendered therein.

By STANLEY V. TUCKER,
Defendant.

Filed September 18, 1970.

## APPENDIX D : STATUTES INVOLVED

## Jurisdictional Statute : 28 USC 1257 (3)

**§ 1257. State courts; appeal; certiorari.**

**Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:**

**(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.**

**(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.**

**(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.**

**For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals. (June 25, 1948, ch. 646, 62 Stat. 929; July 29, 1970, Pub. L. 91-358, title I, § 172(a)(1), 84 Stat. 590.)**

## Connecticut General Statutes Involved

**§ 52-94. Plaintiff's reply; general and special denial; further pleadings**

The plaintiff may demur or reply to the answer and in such reply he may admit some and deny other of the allegations; or, by a general denial of the defendant's answer, if the answer is special, put the defendant upon proof of all the material facts in the answer alleged; but under such general denial he may not give in evidence any matter in avoidance unless it is specially replied. Further pleadings, subsequent in their nature, may be had if necessary by leave of the court. (1949 Rev., § 7816.)

# G. S. 19-346 : Statute Requiring Lighting of Public Halls at Night

**§ 19-346. Overcrowding; water; toilets; ventilation; paint**

If a room in a tenement, lodging or boarding house is overcrowded, the board of health may order the number of persons sleeping or living in such room to be so reduced that there shall not be less than five hundred cubic feet of air to each person over twelve years of age, and three hundrd cubic feet of air to each child under twelve years of age, occupying such room. Water in sufficient quantity shall be provided on each floor, occupied by one or more families, in each tenement house which is located on premises abutting on a street or alley in which pipes for the distribution of water to the public are laid, and, when such house is not so located, a sufficient supply of wholesome water shall be provided on a part of the lot where it will not be



contaminated from water closets, barns, garbage or other sources of impurity. Each building used as a tenement, lodging or boarding house shall be furnished with adequate and suitable privy vaults or water closets. There shall be at least one such closet or vault for each two apartments of two rooms or less each, and one such closet or vault for each apartment of three or more rooms. Each tenement, boarding or lodging house located on premises abutting on any street or alley where running water is available and through which there is a sewer with which connection may be had shall be provided with water closets connected with such sewer, and each such water closet shall be located on the same floor as the apartment which it serves. Each bathroom or water closet compartment in a tenement, lodging or boarding house shall be ventilated by a freely opening window of at least three square feet in area, opening to the outer air or upon a vent shaft having such openings at the bottom and top as meet the approval of the board of health, or by a separate ventilating flue of noncorroding material and at least thirty-six square inches in area, leading directly to the roof. Each such bathroom or water closet compartment, not otherwise sufficiently lighted, shall be provided with light from an adjoining room or rooms by means of translucent glass, of adequate size, in a fixed sash. Dark and poorly ventilated public halls in tenement, lodging or boarding houses shall be remedied in such manner as is deemed practicable and ordered by the board of health. The owner of each tenement house shall provide for the lighting of all public halls at night. No room in a tenement, lodging or boarding house shall be used as a sleeping room unless it has an outside window or is provided with a sash window of at least eight square feet opening into an adjoining room, in the same apartment, having an outside window, which sash window shall be a vertically sliding, pulley-hung sash, both halves of which shall be so constructed as to open readily, and the lower half shall be glazed with translucent glass. The walls of any court, shaft, hall or room shall be whitewashed or painted a light color whenever, in the opinion of the board of health, such whitewashing or painting is needed for the better lighting of any room, hall or water closet compartment. Paint on the accessible surfaces of a tenement house shall not be cracked, chipped, blistered, flaking, loose, or peeling so as to constitute a health hazard.

(1971, P.A. 194, § 2, eff. May 22, 1971.)

1971 Amendment

1971, P.A. 194, § 2, added last sentence relating to paint.

G. S. 19-347r : Issuance of Certificate of Occupancy Constitutes Full Compiance with State Tenement Act and State Building Code



**§ 19-347r. Certificate of occupancy required for lawful occupation. No rent recoverable during unlawful occupation. Exceptions**

(a) No apartment in any apartment house containing four or more housing units in any municipality which adopts the provisions of this section by vote of its legislative body shall be occupied for human habitation, after a vacancy, until a certificate of occupancy has been issued by the person designated by such legislative body of such municipality to administer the provisions of this section, certifying that such apartment conforms to the requirements of the applicable housing ordinances of such municipality and this chapter; provided no provision of this section shall be construed to prohibit human occupancy of such apartment during the pendency of an application for such certificate. Any person aggrieved by the refusal of a certificate of occupancy may appeal to the court of common pleas for the county within which the apartment house is located, and such appeal shall be privileged.

(b) No rent shall be recoverable by the owner or lessor of such apartment house for the occupation of any apartment for which a certificate of occupancy has not been obtained prior to the rental thereof in violation of subsection (a) of this section.

(c) The provisions of this section shall not apply to any apartment house which has been constructed or substantially reconstructed within a period of fifteen years next preceding the date such certificate of occupancy would otherwise be required hereunder nor to any apartment house owned by a housing authority organized under the provisions of chapter 128,[1] which has been constructed or altered pursuant to a contract with the federal government or the state providing for annual contributions or other financial assistance.

(1969, P.A. 482, §§ 1-3; 1971, P.A. 413, § 1; 1971, P.A. 870.)

[1] Sections 8-39 to 8-119d.

**1971 Amendments**

1971, P.A. 413, § 1, made the section inapplicable to apartment house owned by a housing authority organized under the provisions of chapter 128, etc.

1971, P.A. 870 made the section applicable to apartments containing "four" rather than "six" or more housing units, and, in subd. (c) substituted "next preceding" for "next succeeding."

Certificate of occupancy, see § 19-350.

Unlawful occupation, rent recovery, Tenement House Act, see § 19-371.

**Library references**

Health ⇐=31.

Landlord and Tenant ⇐=95.

C.J.S. Health § 23 et seq.

C.J.S. Landlord and Tenant § 118 et seq.

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# CONNECTICUT

*Published in Accordance with General Statutes Section 51-16*

March 28, 1972

VOL. XXXIII No. 39

## CONNECTICUT REPORTS

### SUPREME COURT

March Term, 1972

ELIZABETH A. BITONTI *v.* STANLEY V. TUCKER

Action to recover damages for personal injuries, alleged to have been caused by the negligence of the defendant, brought to the Superior Court in Hartford County and tried to the court, *Rubinow, J.*; judgment for the plaintiff and appeal by the defendant. *No error.*

*Stanley V. Tucker*, pro se, the appellant (defendant).

*Marilyn P. A. Seichter*, with whom, on the brief, was *Richard Levin*, for the appellee (plaintiff).

PER CURIAM. The plaintiff recovered a judgment against the defendant in an action resulting from a stairway fall on the defendant's premises. After the trial court filed its memorandum of decision finding the issues for the plaintiff, counsel who had represented the defendant on the trial of the case was permitted to withdraw his appearance and the defendant, acting pro se, appealed to this court from the judgment rendered. As is not unusual in such circumstances, where an appeal is attempted by a layman who is without legal training and unskilled in legal practice and procedure, the appeal claims innumerable errors on the part of the trial court, including assigned error in seventy-seven paragraphs relating to the draft finding and finding of the court.

In accordance with our established policy to allow great latitude to a litigant who, either by choice or necessity, represents himself in legal proceedings, so far as such latitude is consistent with the just rights of any adverse party, we have carefully examined and considered each of the claims of the defendant so far as it is possible to understand them. See *Higgins* v. *Hartford County Bar Assn.*, 109 Conn. 690, 692, 145 A. 20. If there is merit to any of them, we have been unable to discover it and it would serve no useful purpose to discuss them seriatim.

There is no error.

**Sec. 71. ——Pleading Legal Effect**

Acts and contracts may be stated according to their legal effect, but in so doing the pleading should be such as fairly to apprise the adverse party of the state of facts which it is intended to prove. Thus an act or promise by a principal, other than a corporation, if in fact proceeding from an agent known to the pleader, should be so stated; and the obligation of a husband to pay for necessaries furnished to his wife, whom he has driven from his house, should be stated according to the facts. (P. B. 1951, Sec. 114.)

**PLEADINGS**

**Sec. 133. ——Pleading after Amendment**

When any pleading is amended the adverse party may plead thereto within the time provided by Sec. 76 or, if he has already pleaded, alter his pleading, if he so desires, within ten days after such amendment or such other time as these rules, or the court, may prescribe, and thereafter pleadings shall advance in the time provided by that section. If the adverse party fails to plead further, pleadings already filed by him shall be regarded as applicable so far as possible to the amended pleading. (P. B. 1951, Sec. 94.)

No. 158000

Elizabeth Ann Betonti

v.

Stanley V. Tucker

Motion To Reargue

April 19, 1972. The motion by the defendant to reargue is denied.

By the Court,

J. Howe

Chief Justice